

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 - - - - - X
4 UNITED STATES OF AMERICA, : 18-CR-684(ENV)
5 Plaintiff, :
6 -against- : United States Courthouse
7 ELGIN BRACK, : Brooklyn, New York
8 Defendant. : March 3, 2020
9 - - - - - X
10

11 TRANSCRIPT OF TRIAL
12 BEFORE THE HONORABLE ERIC N. VITALIANO
13 UNITED STATES DISTRICT JUDGE, and a jury.

14 APPEARANCES:

15 For the Government: RICHARD P. DONOGHUE
16 United States Attorney
17 BY: PHILIP A. SELDEN
18 JONATHAN SIEGEL
19 JONATHAN LAX
20 Assistant United States Attorneys
21 271 Cadman Plaza East
22 Brooklyn, New York

23 For the Defendant: JOEL M. STEIN, ESQ.

24 GARY FARRELL, ESQ.

25 Court Reporter: Charleane M. Heading
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Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

1 (In open court; outside the presence of the jury.)

2 THE CLERK: The Honorable Eric Vitaliano presiding.

3 The case on the calendar is USA versus Elgin Brack,
4 case number 18-CR-684, on for a jury trial.

5 Will the attorneys please note their appearances
6 beginning with government counsel.

7 MR. SELDEN: Good morning, Your Honor. On behalf of
8 the United States, Assistant United States Attorney Phil
9 Selden. Your Honor, I'm joined at counsel table by Assistant
10 United States Attorney Jonathan Siegel, Assistant United
11 States Attorney Jonathan Lax, Paralegal Specialist Elicia
12 Bates and Detective Steven Saint-Hilaire. Good morning.

13 THE COURT: Good morning to all.

14 MR. STEIN: Good morning, Your Honor. Joel Stein
15 for Elgin Brack.

16 MR. FARRELL: Good morning, Your Honor. Gary
17 Farrell also for Elgin Brack.

18 Your Honor, I will say yesterday, the jury was able
19 to meet and Judge Orenstein introduced them to our
20 paralegal/law student intern John Bennett who had to be in
21 school this morning but he will be joining us and will be
22 present for most of the trial with the Court's permission.
23 Thank you.

24 THE COURT: Good morning in absentia.

25 THE CLERK: Counsel for both sides are present

1 including defendant.

2 THE COURT: Okay. Good morning, all. Good morning,
3 Mr. Brack, as well.

4 THE DEFENDANT: Good morning.

5 THE COURT: Do we have housekeeping?

6 MR. STEIN: Judge, one scheduling thing although it
7 might be moot. I don't know if we're still going to be here
8 on March 19th. I told your courtroom deputy. I have a
9 conference across the hall with Judge Garaufis with 17
10 defendants. I'd like to be able to attend. It's at 11:30.
11 Hopefully it won't be a problem.

12 THE COURT: We'll work around it. Originally,
13 William thought it was the 17th and I said --

14 MR. STEIN: With deference to Mr. Farrell.

15 THE COURT: -- if it was O'Stein and Farrell, I
16 could understand.

17 MR. STEIN: Deference to Mr. Farrell.

18 THE COURT: Then we definitely would honor that.

19 MR. STEIN: I would never schedule something for the
20 17th.

21 THE COURT: So if it becomes a problem, Mr. Stein,
22 we will work around it.

23 MR. STEIN: Thank you.

24 THE COURT: Any other housekeeping?

25 MR. SELDEN: Briefly on behalf of the government,

1 Your Honor, just to update the Court, it's the government's
2 understanding that Mr. Stein and Mr. Farrell do not plan to
3 conduct any cross-examination based upon the proposed Giglio
4 disclosures made by the government. We wanted to alert the
5 Court and the courtroom clerk about that matter.

6 THE COURT: Was that the subject of the preclusion
7 motion?

8 MR. SELDEN: Yes, Your Honor.

9 THE COURT: Okay. That takes care of that.

10 Any other housekeeping?

11 MR. SELDEN: Your Honor, just one last housekeeping
12 matter. The government understands from Mr. Brack that with
13 the exception potentially of the defendant, there will be no
14 other defense witnesses and we wanted to just put that on the
15 record for scheduling purposes for the Court's knowledge.

16 MR. FARRELL: That's what we expect, Your Honor, at
17 this point and we'll certainly alert the government if our
18 intention changes.

19 THE COURT: Every day is a new day, Mr. Farrell.
20 I've learned not to plan too far ahead. It saves on the
21 erasers.

22 MR. SELDEN: One last matter, Your Honor.

23 THE COURT: Sure. Go ahead.

24 MR. SELDEN: Mr. Brack has entered into a forfeiture
25 stipulation and we wanted to alert the Court to that matter

1 and we'll provide that to the Court. That signed stipulation
2 that the Court will be considering is a stipulation as it
3 relates to forfeiture.

4 Your Honor, at this time, if you would like, I can
5 tender that stipulation up to your courtroom deputy.

6 THE COURT: Sure, please.

7 MR. SELDEN: Thank you very much, Your Honor.

8 THE COURT: Otherwise, later on, things get hazy.

9 MR. SELDEN: Of course, Your Honor. Thank you very
10 much, Your Honor. Nothing else on behalf of the government.
11 Thank you.

12 MR. SIEGEL: Actually, Your Honor, there is one
13 substantive issue we want to raise but I don't know if you
14 want to deal with that forfeiture stipulation first.

15 THE COURT: Well, we will do the forfeiture
16 stipulation in chambers. So, Mr. Siegel?

17 MR. SIEGEL: One of the exhibits that the defense
18 has asked the government to bring to court or one of the items
19 the defense has asked us to bring to court is 9 millimeter
20 ammunition that was found in the car that the defendant and
21 Scott Brack were arrested in. I think it's everyone's
22 understanding that ammunition belonged to the driver of the
23 car who we've been referring to as "Person A" but at trial, it
24 will come out his name is Edward Vasquez.

25 It's the government's position that any evidence of

1 that 9 millimeter ammunition is irrelevant. The gun in this
2 case was a .357 revolver and 9 millimeter ammunition wouldn't
3 even fit in that gun. So it has no relevance to these charged
4 crimes.

5 To the extent there's any argument that Edward
6 Vasquez was the kind of person who had ammunition and,
7 therefore, was more likely to commit these crimes, that's the
8 same kind of propensity argument that the defense was trying
9 to make about Scott Brack that Your Honor has already
10 precluded and should also be precluded here.

11 There's a larger issue that goes to this ammunition
12 and potentially other evidence in the case which is arguments
13 about should the ATF or the NYPD have done more investigation
14 into Edward Vasquez since they found this ammunition or other
15 factors. The issue with that argument is it's highly
16 prejudicial to the government because the reason the ATF and
17 the NYPD didn't do more investigation into Edgar Vasquez is
18 that Scott Brack confessed the night he was arrested. He
19 said, "I was the driver, my nephew Elgin was the person who
20 went into the store," and every ATF officer who saw the
21 surveillance video and saw Elgin Brack recognized him from
22 that video as you heard Lieutenant Smith testify on his own
23 behalf.

24 So if there's any argument that the ATF should have
25 investigated Mr. Vasquez more as a suspect in this robbery,

1 the government's hands are going to be tied because we can't
2 explain why they didn't do that investigation without bringing
3 in, frankly, testimony that would violate the Sixth Amendment.
4 So given that we can't actually respond with the reasons why
5 they didn't do that investigation, it's prejudicial and,
6 frankly, not probative to get into any accusations of why
7 didn't you do this more investigation or shouldn't you have
8 done more investigation into Edward Vasquez.

9 THE COURT: Mr. Stein or Mr. Farrell?

10 MR. STEIN: Judge, well, you know, I think bringing
11 this up now is going to open up a bit of a Pandora's box. I
12 don't know if you want to deal with it now.

13 THE COURT: Well, it depends if Mr. Vasquez is going
14 to be the first witness.

15 MR. STEIN: He's not, Judge.

16 THE COURT: Then we can wait.

17 MR. STEIN: That's part of the problem.

18 THE COURT: Then we can wait.

19 MR. STEIN: Okay.

20 THE COURT: We can pick it up one day after we've
21 finished for the day as far as the jury is concerned and this
22 way, we won't lose jury time.

23 MR. SIEGEL: And Your Honor, that's obviously fine
24 with the government. As Mr. Stein alluded to, we're not going
25 to be calling Mr. Vasquez. If this evidence comes in at all,

1 I expect it would probably be brought out through an ATF
2 witness who isn't testifying today, but I just want to make
3 sure that's not something that's going to be in the opening or
4 tried to be crossed with any of the witnesses today. As long
5 as that's not going to happen today, obviously, we can resolve
6 it later.

7 MR. STEIN: That's fine, Judge.

8 THE COURT: Okay. That alerts us. We can always
9 have, if it's a different witness, we can always have a
10 sidebar if we don't get to resolve it in advance.

11 Anything else?

12 MR. SELDEN: Not on behalf of the government. Thank
13 you, Your Honor.

14 MR. STEIN: No, Judge.

15 THE COURT: Today is the traditional morning of
16 remorse and lament, so Juror Number Seven has anxiety
17 issues at the robust age of 20. It gives her migraines. My
18 inclination is, and I don't know, I wasn't obviously there
19 yesterday so I don't know if any of that came up during voir
20 dire. I just assume that she had an opportunity at some point
21 during voir dire to bring that to the attention of
22 Judge Orenstein.

23 MR. FARRELL: I would agree with you, Your Honor.
24 Judge Orenstein gave everyone a full and fair opportunity and
25 many, many jurors took advantage of sharing their feelings,

1 and Ms. Marks, Juror Seven, did not in any way indicate that
2 she was anxious or anything.

3 THE COURT: So my inclination is to -- well, she
4 indicates that she can provide medical proof, et cetera. My
5 inclination is to tell her to sit and see what happens and
6 we'll cross a problem bridge should one actually develop.

7 MR. SELDEN: Your Honor, the government is in
8 agreement with the Court on that matter. We also do want to
9 alert the Court that she did put on the record yesterday that
10 migraines can happen to her, but we are in agreement with the
11 Court, see how things flesh out.

12 THE COURT: It can happen. There are plenty of
13 people who have anxiety and migraines and good old fashioned
14 headaches and you try to work through them.

15 William has provisionally told Juror Seven that her
16 request is under consideration and that the Court would take
17 it up with the parties and that we would go from there. So
18 now William knows where the "there" is and he will advise her
19 that we will go from there.

20 Now, on openings, which whom's are doing them?

21 MR. FARRELL: I'm doing the defense, Your Honor.

22 THE COURT: Mr. Farrell, yes.

23 MR. SELDEN: Your Honor, I'll be conducting the
24 opening on behalf of the government.

25 THE COURT: Mr. Selden. You're too far away from me

1 to see so I'm trying to recognize your voice. It works most
2 of the time, not all of the time.

3 All right. William, I guess apparently we are ready
4 so let us begin.

5 (Jury enters.)

6 THE COURT: Counsel will stipulate that the jury is
7 present and properly seated.

8 MR. STEIN: Yes, Judge.

9 MR. SELDEN: Yes, Your Honor.

10 THE COURT: The clerk will swear the jury.

11 (Jury sworn by the clerk.)

12 THE CLERK: Thank you.

13 THE COURT: Be seated, please.

14 Ladies and gentlemen of the jury, I am Judge Eric
15 Vitaliano. I am privileged to preside over this case and to
16 welcome you to our court and to thank you for your service.
17 Your cooperation, the fact that you are all here is extremely
18 important to all of us.

19 What I always tell jurors, whether it's a criminal
20 case like this one or a civil case, don't underappreciate how
21 important you are. Other than putting on a uniform and
22 defending your country in a time of war, there is no greater
23 act of patriotism or citizenship to do exactly what you are
24 doing. There are many, many countries around the world that
25 we would recognize to be free and democratic and they don't do

Jury Instructions by Order of the Court

11

1 it this way. They don't protect their rule of law the way we
2 protect our rule of law. And what is it that we do? We rely
3 on everyday citizens to put down their own work, their own
4 lives, and come to a court and sit as jurors and make this
5 their most important business.

6 Hundreds of thousands of Americans over the 200 plus
7 years of our existence have fought and died for the rule of
8 law and when they have returned home, they hand that rule of
9 law over not just to judges and lawyers, but most importantly
10 protected in our constitution, they hand it over to you,
11 everyday citizens. So what you do and how you do it and your
12 commitment to do it is not only helping to resolve a
13 particular case, you're keeping faith with those who have
14 fought and died for the rule of law and the American way of
15 providing civil and criminal justice.

16 So we certainly, all of us, appreciate your
17 commitment, your sacrifice and we look forward to making your
18 stay with us as efficient as we can and as painless and we can
19 but, again, we all thank you.

20 Now, I have prepared some preliminary instructions
21 to help orient you to the case and I am going to ask my deputy
22 clerk of court and law clerk Anthony LaMonaco to read them to
23 you.

24 Mr. LaMonaco.

25 THE LAW CLERK: Members of the jury, we are about to

Jury Instructions by Order of the Court

12

1 begin the trial of this criminal case about which you heard a
2 little bit during the process of jury selection. Before the
3 trial begins, however, there is certain information the Court
4 will now give you which will help you to understand what will
5 be presented before you and how you should conduct yourselves
6 during the trial.

7 To begin with, you are here to administer justice in
8 this case according to the law and the evidence with complete
9 fairness and impartiality and without bias, prejudice or
10 sympathy for or against the government or the defendant.

11 This is important to the defendant who is charged
12 with a crime and has the constitutional right to receive a
13 fair trial. The case is also important to the government
14 since the enforcement of the criminal laws is important.

15 There are three basic rules about a criminal case
16 that you must keep in mind.

17 First, the defendant is presumed innocent unless and
18 until proven guilty at the conclusion of the case. The
19 indictment against the defendant brought by the government is
20 only an accusation, nothing more. It is not proof of guilt or
21 anything else. The defendant therefore starts out with a
22 clean slate.

23 Second, the burden of proof is on the government
24 throughout the case. The defendant has no burden to prove his
25 innocence or to present any evidence or to testify. Since the

Jury Instructions by Order of the Court

13

1 defendant has the right to remain silent, the law prohibits
2 you from arriving at your verdict by considering the defendant
3 may not have testified.

4 Third, the government must prove a defendant's guilt
5 beyond a reasonable doubt. I will give you further
6 instructions on this point later, but bear in mind that in
7 this respect, a criminal case is different from a civil case.

8 The case is based on an indictment. I will not read
9 the full indictment to you, but similar to what
10 Magistrate Judge Orenstein said to you during the jury
11 selection, I will summarize it to you. I will explain each
12 count in greater detail at the close of the case in my final
13 instructions to you.

14 Keep in mind, however, that the indictment is a
15 document in which the criminal action is commenced and is
16 merely an accusation, a charge. It is not evidence of the
17 defendant's guilt.

18 The indictment contains nine counts.

19 Count One charges that on or about November 26,
20 20148, Elgin Brack, together with others, did knowingly and
21 intentionally conspire to obstruct, delay and affect commerce
22 by robbery of United States currency from one or more
23 employees of one or more convenient stores in Queens,
24 New York.

25 Count Two charges that on or about November 26,

Jury Instructions by Order of the Court

14

1 2018, Elgin Brack, together with others, did knowingly and
2 intentionally attempt to obstruct, delay and affect commerce
3 by the robbery of United States currency from one or more
4 employees of a Duane Reade store located at 60-02 Roosevelt
5 Avenue in Queens, New York.

6 Count Three charges that on or about November 26,
7 2018, Elgin Brack, together with others, did knowingly and
8 intentionally possess, brandish and discharge one or more
9 firearms during and in relation to the crime charged in
10 Count Two.

11 Counts Four, Five -- sorry. Counts Four, Six and
12 Eight charge that on or about November 26, 2018, Elgin Brack,
13 together with others, did knowingly and intentionally
14 obstruct, delay and affect commerce by the robbery of United
15 States currency from one or more employees at the following
16 locations: A 7-Eleven store located at 50-92 Northern
17 Boulevard in Queens, New York; a Rite Aid store located at
18 33-01 30th Avenue in Queens, New York; and a Rite Aid store
19 located at 115-10 Merrick Boulevard in Queens, New York.

20 Counts Five, Seven and Nine charge that on or about
21 November 26, 2018, Elgin Brack, together with others, did
22 knowingly and intentionally possess and brandish one or more
23 firearms during and in relation to the crimes charged in
24 Counts Four, Six and Eight.

25 Since the defendant has pleaded not guilty, the

Jury Instructions by Order of the Court

15

1 government has the burden of proving each of the essential
2 elements of each charge of the indictment beyond a reasonable
3 doubt. The purpose of the trial is to determine whether the
4 government meets this burden.

5 I will repeat: The defendant does not have to prove
6 his innocence. On the contrary, the defendant is presumed to
7 be innocent of the accusations against him contained in the
8 indictment.

9 The trial will proceed in the following order.

10 First, the parties have the opportunity to make
11 opening statements. The government will make such a
12 statement. Then the defendant, though he is not obliged to do
13 so, may make an opening statement or may defer it until the
14 end of the government's case. What is said in these
15 statements is not evidence but simply an introduction to the
16 evidence that the parties intend to produce.

17 Next, the government will introduce evidence in
18 support of the charges.

19 Then the defendant may present evidence but is not
20 required to do so. The burden is always on the government to
21 prove every element of each offense charged beyond a
22 reasonable doubt. The law never imposes on the defendant in a
23 criminal case the burden of calling any witnesses or
24 introducing any evidence.

25 After all the evidence has been presented, each

Jury Instructions by Order of the Court

16

1 party has the opportunity to present an argument in support of
2 their case. What is said in these arguments is not evidence.
3 They simply present to you the contentions of the parties as
4 to what the evidence has shown and what inferences may be
5 drawn from the evidence. The government has the right to open
6 and close the argument.

7 Lastly, the Court will instruct you on applicable
8 law and you will then retire to consider your verdict. Your
9 verdict must be unanimous.

10 You have a tremendously important task as jurors.
11 It is to determine the facts. Our constitution gives the
12 defendant a right to have you, who are members of the
13 community, find those facts. You, and not the Court, are the
14 sole and exclusive judges of the facts, and nothing I say or
15 do should be taken by I you as any indication of my opinion as
16 to the facts. As to the facts, neither I nor anyone else may
17 invade your area of responsibility.

18 I will preside impartially and will not express any
19 opinion concerning the facts. Any opinions of mine on the
20 facts would, in any event, be entirely irrelevant because the
21 facts are for you to decide. On the other hand, and with
22 equal emphasis, I instruct you that, in accordance with the
23 oath you took as jurors, you are required to accept the rules
24 of law that I give you whether you agree with them or not.
25 You are not to ask anyone else about the law. You should not

Jury Instructions by Order of the Court

17

1 consider or accept any advice about the law from anyone else
2 but me.

3 The evidence from which you will find the facts will
4 consist of the testimony of witnesses as well as documents or
5 other things being received on the record as exhibits in
6 evidence. Evidence also includes any facts that the lawyers
7 agree to or stipulate to or that the Court may instruct you to
8 find.

9 There are two kinds of evidence: Direct and
10 circumstantial. Direct evidence is direct proof of a fact
11 such as testimony of an eye witness. Circumstantial evidence
12 is proof of facts from which you may infer or conclude that
13 other facts exist. I will give you further instructions on
14 these as well as other matters at the end of the case, but
15 keep in mind that you may consider both kinds of evidence.

16 Ultimately, when it comes to the testimony of
17 witnesses, it will be up to you to decide which witnesses to
18 believe, which witnesses not to believe, and how much of any
19 witness' testimony to accept or reject. I will give you some
20 guidelines for determining the credibility of witnesses at the
21 end of the case.

22 Certain things you may hear or see are not evidence
23 and must not be considered by you. I will list them for you
24 now.

25 Statements, arguments and questions by lawyers are

Jury Instructions by Order of the Court

18

1 not evidence.

2 Objections to questions are not evidence. Lawyers
3 have an obligation to their clients to make objections when
4 they believe evidence being offered is improper under the
5 rules of evidence. You should not be influenced by the
6 objections or by the Court's rulings on them. These rulings
7 deal with questions of law and not fact. Objections and
8 rulings have nothing to do with your role as jurors. They are
9 for the Court to decide. If the objection is sustained,
10 ignore the question. If it is overruled, treat the answer
11 like any other. If you are instructed that some item of
12 evidence is received for a limited purpose only, you must
13 follow that instruction.

14 Testimony that the Court has excluded or told you to
15 disregard is not evidence and must not be considered.

16 Anything you may have seen or heard outside of the
17 courtroom is not evidence and must be disregarded. You are to
18 decide the case solely on the evidence presented here in the
19 courtroom.

20 There are several rules which should govern your
21 conduct during any recess, that is, when you are not in the
22 courtroom. You will not be required to remain together while
23 court is in recess, but you are required to follow these
24 instructions about recesses.

25 Do not discuss the case among yourselves or with

Jury Instructions by Order of the Court

19

1 anyone else. This includes discussing the case in person, in
2 writing, by phone or electronic means, by text messaging,
3 e-mail, Facebook, Twitter, Instagram, Snapchat, blogging or
4 any other chat room, website or other feature. You should
5 keep an open mind, reaching your conclusion only during your
6 final deliberations after all the evidence is in and you have
7 heard the attorneys' summations and the Court's instructions
8 on the law, and then only after an exchange of views with the
9 other members of the jury.

10 Do not try to do any research or make any
11 investigation on your own about the case, any individuals or
12 entities involved in the case, or any media platforms,
13 technology or online forums you might hear about throughout
14 the case. Do not read, listen to or watch any accounts of
15 this case should it be covered by any media. The case is to
16 be decided only by the evidence you see and hear in the
17 courtroom during trial.

18 Since this case involves occurrences alleged to have
19 happened at particular locations, you may be tempted to visit
20 the locations yourself. Please do not do so. Because of the
21 time that elapses before a case comes to trial, substantial
22 changes may have occurred at the locations in question since
23 the events relevant to this case. Also, in making a visit
24 without the benefit of explanation, you might get mistaken
25 impressions. Therefore, even if you happen to live near any

Jury Instructions by Order of the Court

20

1 of the locations, please avoid going to them or past them
2 until the case is over.

3 Do not permit any other person to discuss the case
4 in your presence, and if anyone does so even though you tell
5 him or her not to, report that fact to me. You should not,
6 however, discuss with your fellow jurors either that fact or
7 any other fact that you feel necessary to bring to my
8 attention.

9 Though it is a normal human reaction to talk with
10 people with whom one is thrown together in contact, please do
11 not talk with any of the parties or their attorneys or any
12 witness, whether in the courtroom, in the hallways, in the
13 elevator, outside or anywhere else. By this, I mean not only
14 do not talk about the case, but do not talk at all, even to
15 pass the time of day.

16 Under the law, only twelve jurors will deliberate on
17 this case when it is submitted for consideration.

18 We have selected additional jurors called
19 alternates. Alternate jurors are selected to serve because a
20 regular juror may be prevented from continuing to serve by
21 some emergency such as a serious illness or death. Although
22 this seldom happens during a trial, there are cases where we
23 do call on the services of alternates. Alternates are
24 required to pay the same careful attention to the trial as the
25 regular jurors, so that if needed, they will be fully familiar

Jury Instructions by Order of the Court

21

1 with the case.

2 The fact that there are alternate jurors does not
3 mean that any regular juror is free to excuse himself or
4 herself from the case. As a duly chosen juror, it is your
5 obligation to be available throughout the trial.

6 The description of trial procedure, the rules
7 governing your conduct, and the legal principles governing a
8 criminal case I have just discussed with you, will, I believe,
9 make it easier for you to understand the trial as it goes on
10 and to reach a proper and just result at its conclusion.

11 Now, ladies and gentlemen, we are ready to proceed
12 with the next phase of the trial.

13 THE COURT: Thank you, Mr. LaMonaco.

14 Now, ladies and gentlemen, if you paid attention,
15 and I know you did, to what Mr. LaMonaco read to you, the next
16 phase of the trial are the opening statements by the
17 attorneys.

18 Now, again, what is said in these opening statements
19 is not evidence. This is an introduction to what they think
20 the evidence in their view will show. Ultimately, of course,
21 that's the decision that you will make during the time of
22 deliberations.

23 So to begin the opening statements, I will call on
24 Assistant United States Attorney Phil Selden to make the
25 opening statement on behalf of the government.

Opening - Selden

22

1 MR. SELDEN: Thank you, Your Honor.

2 On November 26, 2018, at 3:30 in the morning,
3 defendant Elgin Brack walked into a 24 hour Duane Reade. He
4 walked up to a store clerk, pretended to make a purchase and
5 when that clerk opened the cash register tray in front of him,
6 the defendant pulled out a gun. He demanded money. When the
7 clerk didn't act quickly enough, he shot him in the left hand.
8 The men struggled and defendant Elgin Brack shot that store
9 clerk in the head. As the clerk lay bleeding on the store
10 floor, defendant Elgin Brack did not stop there. Over the
11 next two hours, the defendant went to three other 24-hour
12 convenience stores all in Queens and committed armed
13 robberies.

14 That, ladies and gentlemen, is why we are here
15 today.

16 My name is Assistant United States Attorney Phil
17 Selden. I'm joined at counsel table by Assistant United
18 States Attorney Jonathan Siegel, Assistant United States
19 Attorney Jonathan Lax, Paralegal Specialist Elicia Bates,
20 Detective Steven Saint-Hilaire from the joint ATF-NYPD robbery
21 task force. Together, we represent the United States.

22 We will prove this case beyond a reasonable doubt
23 and you will come to learn that over two hours, the defendant
24 went to four separate stores pretending to make legitimate
25 purchases; in some instances, a bag of Skittles, a carton of

Opening - Selden

23

1 eggs, a greeting card, stick of gum, even a Snickers bar. He
2 lulled cashiers into believing that he was there for a
3 legitimate purpose and when they opened up their cash register
4 trays, he pulled out a .357 revolver and robbed them.

5 You'll come to learn that he wore the same
6 distinctive black and green hooded sweatshirt, the same
7 distinctive paints with copper zippers running down the legs
8 and the same distinctive white shoes at each one of those four
9 stores.

10 You'll also come to learn that he didn't act alone
11 because while the defendant was the gunman, there was a
12 getaway driver outside and you'll learn about that evidence
13 throughout the course of the trial.

14 For his crimes, the defendant is charged with
15 conspiring to commit those robberies with the getaway driver.
16 He's charged with attempting to rob that first Duane Reade
17 store because after he shot the store clerk, he was not
18 successful in taking any money, he's charged with discharging
19 a firearm and, finally, he's charged with the three other
20 robberies of the stores, a 7-Eleven and two separate Rite Aid
21 stores, as well as using a gun during those crimes.

22 We will prove this case beyond a reasonable doubt in
23 the following ways.

24 You'll hear from eye witnesses. Ladies and
25 gentlemen, you will hear from the store clerks who will

Opening - Selden

24

1 describe how they were lulled into believing this was a
2 legitimate purpose, you'll hear the interaction that they had
3 and you will hear about the robberies that took place.

4 Beyond eyewitness testimony, you'll also see
5 surveillance video, surveillance video that captures the
6 defendant entering into those stores with that same
7 distinctive green and black hooded sweatshirt, those same
8 distinctive paints and those same white shoes, and on that
9 surveillance video, ladies and gentlemen, you'll see the
10 defendant's face because he wasn't wearing a mask.

11 Beyond eyewitness testimony, surveillance video,
12 there is more. Ladies and gentlemen, less than 24 hours after
13 the defendant committed this armed robbery spree, he was
14 stopped in the same car with the same getaway driver.

15 When ATF and NYPD officers went and approached him
16 in the back seat of that car, seated next to him was that
17 distinctive green and black hooded sweatshirt as well as his
18 cell phone and on that cell phone, when agents reviewed it,
19 they found internet searches, internet searches that
20 correspond to the exact time that he was committing these
21 robberies, internet searches for 24-hour convenient stores and
22 for his final robbery, an internet search for a 24-hour
23 convenient store, Jamaica, New York. Ladies and gentlemen,
24 the evidence will show that the last armed robbery committed
25 by defendant Elgin Brack was of a Rite Aid, a 24-hour

Opening - Farrell

25

1 convenience store in Jamaica, New York.

2 But there's more. You'll also come to learn that
3 seated next to the defendant was his backpack and in that
4 backpack were the distinctive black pants with the zippers
5 going down the legs, in that backpack was his ID and in that
6 backpack was the gun he used to shoot the store clerk with
7 Elgin Brack's DNA on it.

8 Ladies and gentlemen, when you consider all of this
9 evidence, the eyewitness testimony, surveillance video, when
10 you consider the physical and the forensic evidence, we will
11 ask you to reach the only verdict that it supports. Hold the
12 defendant accountable. Find him guilty.

13 Thank you.

14 THE COURT: Thank you, Mr. Selden.

15 MR. SELDEN: Thank you.

16 THE COURT: We will now have the opening statement
17 on behalf of the defendant by Mr. Gary Farrell.

18 Mr. Farrell?

19 MR. FARRELL: May it please the Court, Mr. Brack,
20 Mr. Stein, gentlemen and lady who represent the government,
21 ladies and gentlemen of the jury, good morning.

22 I've got to tell you, I'll admit it, the wind's
23 officially knocked out of my sails. What do I mean by that?
24 I'll tell you. I was excited to go old school defense
25 attorney.

Opening - Farrell

26

1 What do I mean by that? I was going to borrow from
2 one of two: A classic opening by John Gotti's lawyer, he
3 would always stash an indictment on the government's desk, he
4 would pick it up, he'd rip it up, throw it in the garbage and
5 that was his thing, or I was going to borrow from my favorite
6 fictional lawyer, Vincent Gambini, played so masterfully by
7 Joe Pesci in "My Cousin Vinny," where after an opening like
8 Mr. Selden just gave laying out the evidence, Vincent Gambini
9 looked up to the jury, walked up and said, "What that guy just
10 said, it's all bull, you know what."

11 But I can't do that here, ladies and gentlemen. I
12 listened like you did intently to Mr. Selden and I know it's
13 not all bull, what he said. It's just not.

14 There were four crimes here captured on videotape.
15 No question about it. The person who did the crimes was, his
16 face was partially concealed. Mr. Selden would have you
17 believe that it's just like he was walking, but that's not the
18 case, not what it was. It was pulled tight, the hood, so keep
19 that in mind, that's important. But he's right with respect
20 to the fact that this was captured on videotape. And one guy
21 was shot, seriously injured.

22 There was distinctive clothing. He's right about
23 that. The shooter was wearing a green jacket with a black
24 hood and these black zipper pants. That's true. He used a
25 big black gun. That's true. Money was taken from the three

Opening - Farrell

27

1 stores, about 1,300 bucks.

2 This license plate recognition you are going to hear
3 about, I don't think Mr. Selden talked about it but I know you
4 are going to hear about it, it was responsible for identifying
5 the getaway car here and that getaway car was driven by Scott
6 Brack. You are going to hear about that.

7 Then as Mr. Selden ended his opening, he talked
8 about what happened in the Bronx at 8:45 that evening. That's
9 important because that's when Elgin Brack was stopped in a car
10 with Scott Brack, a guy named Edward Vasquez who was driving
11 and Edwin Vasquez's daughter.

12 And, yes, this distinctive clothing, this green
13 jacket, this black pants with zippers, all sorts of cash, over
14 \$6,000 was recovered in that car. A big black gun was
15 recovered in that car and not only a big back gun, a big black
16 gun that showed it was just fired twice and that, of course,
17 is how many shots were fired at the Duane Reade when the poor
18 guy working there got shot. And you know what? It even gets
19 worse because they're going to tell you the evidence is going
20 to show that on the handle of that gun was DNA, a mixture of
21 DNA, some of which belonged to Elgin Brack. And they're going
22 to show you that a phone registered to Elgin Brack was in that
23 car and that showed, as he told you, it showed there was a
24 search for 24 hour stores the morning around the time of
25 robberies.

Opening - Farrell

28

1 So what can we conclude from all of that, ladies and
2 gentlemen? We conclude they're right, I guess: Elgin Brack's
3 guilty.

4 I'm sorry, Elgin. I really am.

5 You know what though? Wait a second, ladies and
6 gentlemen. Before you close the book on young Elgin Brack,
7 consider this for a moment, that, yeah, they're right, he's
8 guilty, but he's not guilty of the crimes charged in this
9 indictment.

10 You know what the evidence is going to show he's
11 guilty of? Of being Scott Brack's cousin and that's not his
12 fault because we all know you can pick your family -- I'm
13 sorry, I messed that up old saying. You can pick your
14 friends, ladies and gentlemen, you can pick your friends. You
15 can't pick your family.

16 The evidence will show beyond any shadow of a doubt
17 that Scott Brack is a thousand percent guilty of these crimes
18 and the evidence is going to show that Elgin Brack is much,
19 much different than Scott Brack.

20 First of all, he's half his age. He's only 24. And
21 unlike Scott who the evidence will show lived around Queens
22 for years, Elgin grew up in the south from North Carolina. He
23 just came up here to New York City fairly recently. And this
24 was his family, his only family, so he relied on him for a
25 plays to live.

Opening - Farrell

29

1 Here's a significant thing that you didn't hear from
2 the government. Elgin Brack was gainfully employed. I don't
3 mean working off the books at a deli, not that there's
4 anything wrong with that, I did that in college. He was
5 employed by the biggest employer in this whole city and you
6 guys know who that is: The City of New York.

7 Elgin Brack worked for the Parks & Rec. Department
8 and you'll see official records verifying that. Don't take my
9 word for it. And you are going to show that this young man
10 worked so much overtime that in a 12 week pay period, his
11 gross was nearly \$5,000 and that's in October 2018. This kid
12 was, this young man was single. No children. That's a lot of
13 money. That's what this, the evidence will show.

14 Elgin Brack had a bank account at Wells Fargo. You
15 are going to see two months of records, two months of
16 statements. He actually deposited cash into his account.
17 What self-respecting robber does that? But you are going to
18 hear that's the evidence that you are going to see those
19 records from Wells Fargo.

20 And you are going to see that Elgin Brack, like many
21 young men do, he posted on Facebook and he posted pictures of
22 him holding money, stacks of 20s. Now, he didn't hold a big
23 black gun in the other hand. The evidence will show this guy
24 is not Jesse James. He's Elgin Brack. He was trying to
25 impress girls showing the *dinero* trail, as he called it,

Opening - Farrell

30

1 because he made the money honestly, legitimately.

2 Then there's Scott Brack. Fifty years old. He's
3 hanging out with Edwin Vasquez, "Boogie" and he refers to him
4 in his phone. And the evidence will show you that Vasquez
5 lived in a homeless shelter in Jersey City. That's who Scott
6 Brack's man was, scheming Scott Brack, the evidence will show
7 and, hey, I'm not here to talk about the President but he's
8 pretty good with the nicknames.

9 So the evidence is going to show scheming Scott
10 Brack and Mr. Vasquez were hanging around in Vasquez's car.
11 It kind of sounds like it doesn't make sense. What homeless
12 guys have cars? Well, Vasquez, he wasn't driving a Porsche.
13 It was 2002 Toyota Solara that he got from his brother, but
14 you are going to hear that it was important to Scott Brack
15 that he needed that car on the night of November 25, 2018
16 because Vasquez had to go back to Jersey to sign into the
17 shelter by 11.

18 Now, fast forward to November 26, 8:45 p.m. The
19 NYPD task force does a great job through the technology of
20 license plate reading. They see the car. It's on video, it's
21 pulling away from one of the robberies, and with the license
22 plate, they can trace the car. They get a tip. It's in the
23 Bronx. It's double-parked somewhere. They do a great job.
24 They get up there.

25 And what happens? The evidence is going to show

Opening - Farrell

31

1 they came up on this car at about 8:45 at night on Hughes
2 Avenue and they confront, hey, this is the car. And who's in
3 the car? Well, Vasquez is in the car. He's driving it.
4 Scheming Scott Brack is sitting next to him in the front and
5 Elgin is sitting in the back with a four-year old girl.

6 (Continued on next page.)

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Opening Statement - Farrell

32

1 (Continuing)

2 MR. FARRELL: And when the cops came up to the car,
3 Elgin didn't run away. He could have. You'll see he was
4 dressed in a sweatsuit and he had good sneakers on. He didn't
5 run.

6 And the cops, you'll see, the evidence will show,
7 they were concerned with the guys in the front seat. Vasquez
8 and "Scheming Scott". They took them right out. Elgin was
9 sitting in the car with the little girl. He heard other cops
10 say when they asked what's up in the back? Oh, no biggy. Two
11 girls.

12 Now, you can see Elgin has the distinctive dreads
13 and in the dark, the cops thought he was a girl. So they
14 didn't do anything to him. He was there for 15 minutes
15 waiting, trying to figure out, well, what's going on.

16 And you'll see the evidence, he was just looking for
17 a ride to the bus to go to North Carolina from Vasquez.

18 Eventually, he's taken to ATF headquarters and the
19 car was searched at ATF, and that's an important part of the
20 case, ladies and gentlemen, because Vasquez remember, he's
21 homeless. We all see homeless guys. They've got their carts.
22 Well, his cart was his brother's car.

23 The Government would have you believe this is a
24 nice, neat package. Oh, there's Elgin Brack's bag. The
25 distinctive pants were in it. The big gun was in it.

Opening Statement - Farrell

33

1 Well, that's what they say, ladies and gentlemen,
2 but I submit the evidence is not going to show that; that
3 nothing in life or certainly in this case or that car is so
4 nice and neat. I submit the evidence is going to show that
5 those agents compromised the integrity of that physical
6 evidence. There was a whole bunch of stuff in the back seat,
7 in the trunk. There was crap spread all over. And yeah, the
8 gun was somewhere in there, but the evidence is going to show
9 it wasn't in Elgin's bag because it wasn't his gun.

10 Now, I don't think Mr. Selden told you this, but I'm
11 telling you. They're going to bring in an expert to say there
12 was a mixture of three types of DNA on that gun, and one of
13 them was Elgin's. But I'll tell you this also, the expert's
14 not going to say that I can tell you definitively the DNA
15 is -- because he was holding that gun when he was holding up
16 people on the morning of November 26th. He's going to talk
17 about the possibility of transference and you'll hear about
18 that during the trial.

19 And by the way, the shooter wore gloves in this
20 case. You'll see that as plain as day, but no gloves were
21 recovered in his car.

22 Now, yeah, Brack's phone was recovered somewhere in
23 that mess. And another phone was recovered in that car. And
24 another backpack was recovered in that car. You didn't hear
25 about that from Mr. Selden, but you're going to hear about it

Opening Statement - Farrell

34

1 during the trial.

2 And about that phone, yes. They're going to be able
3 to say that someone, someone Googled 24-hour searches because
4 you know what? You also didn't hear when they got his phone,
5 they did what good police do. They got a search warrant to
6 extract the whole body of stuff. Think about it, ladies and
7 gentlemen. Think about how much of our lives are in our phone
8 these days. You know how much came out of Brack's phone?
9 2500 pages of texts, of searches, of anything you could do
10 with your phone where we live our lives, unfortunately, now.

11 And you know what you're going to see in this case
12 coming from those 2500 pages? One little piece from
13 November 26th, 2018, from 2 a.m. to 4 a.m., where someone is
14 searching for 24-hour stores. I submit the evidence will show
15 it wasn't Elgin Brack, because he wasn't with his phone. The
16 phone was with Scott Brack at that time in Vasquez's car and
17 Elgin was not there. 2500 pages. You would think there would
18 be something that might show that the guy was a robber,
19 instead of a guy working at a park in the Bronx.

20 The bank records again will help Elgin Brack because
21 they're going to show that that morning, remember this took
22 place early in the morning. Later in the morning Elgin took
23 20 bucks out of a bank in New Jersey, where he did take a ride
24 with Scott to give Vasquez's car back. He pulled over and he
25 paid two extra dollars to take out 20. This is from a guy who

Opening Statement - Farrell

35

1 supposedly just stole 1300 bucks from three stores.

2 And then later on, on November 26th, he took 50
3 bucks out of the Bronx.

4 Here's the best, ladies and gentlemen, though.

5 Here's something Mr. Selden didn't tell you, but I'm telling
6 you. There was a whole bunch of cash in that car; over
7 \$6,000. You know what the Government did with 5,000 of it?
8 They gave it back to Elgin Brack, because they couldn't prove
9 it came from anywhere, other than his hard work. They gave
10 the money back. To the robber. Think about that, ladies and
11 gentlemen.

12 And think about what Elgin actually did have with
13 him; two pairs of jeans, not black pants with zippers.
14 Those weren't his and they certainly weren't in his bag.
15 You're going to see it's this little backpack. It could not
16 have fit all this stuff. He had flip-flops because he was
17 going to North Carolina. He had T-shirts, jeans.

18 Ladies and gentlemen, Elgin, you should have taken
19 an Uber. He was looking for a ride to the bus and here he
20 stands today.

21 The evidence will show that not one of the four
22 victims is going to come and sit in that chair and point to
23 our client and say that guy robbed me, even though the robber,
24 you're going to see on the video, he was as close or closer
25 than I am to any of you. Not one of those people are going to

Opening Statement - Farrell

36

1 say he's the guy that robbed them.

2 And the shiny white sneakers that Mr. Selden talks
3 about. Well, ladies and gentlemen, the evidence is going to
4 show at that Duane Reade when the perpetrator tried to steal
5 the money, the clerk, Mr. Deleon, was a hero. He tried to be.
6 He fought with the guy pointing a gun at him instead of just
7 giving it up, and that cost him dearly. It cost him half of
8 his thumb. It cost him being shot in the head.

9 But what happened here, there is blood all over
10 where this happened. All over. You're going to see the
11 pictures. You're going to hear about it. Yet there's Elgin
12 Brack in his shiny white sneakers, not a drop of blood on it.
13 And you know what they did? They gave it back. They gave the
14 sneakers back to him. The guy that supposedly shot the guy
15 for refusing to give over the money. Not a scintilla of blood
16 on it.

17 And ladies and gentlemen, about the all-important
18 search of this car. You'll decide where everything really
19 was; that they tried to document it by videotaping it on
20 somebody's cell phone. I think you're going to see that.

21 You're going to hear the agents laughing while
22 they're doing this and it's not clear and it's not high
23 quality. It's just not professionally done. The integrity of
24 that physical evidence was contaminated right away, the way
25 they did the search. And the evidence is definitely going to

Opening Statement - Farrell

37

1 show there's nothing funny about this case.

2 The case the Government wants you to believe is
3 based on assumptions they want you to make and when you hear
4 the charge of proof beyond a reasonable doubt at the end of
5 trial by Judge Vitaliano, you're going to agree that doesn't
6 equal proof beyond any reasonable doubt. You're going to see
7 and it's going to start any minute, tons and tons of photos,
8 of videos, from all these locations. You're going to wish
9 they served Red Bull when they call some of these witnesses,
10 ladies and gentlemen, I can promise you that, because all it's
11 going to show is that each of those four locations, yes, a
12 crime was committed. An attempted robbery and a shooting
13 where Mr. Deleon was badly hurt, and he's lucky to be alive.
14 And we're of course all glad that he is.

15 But that evidence doesn't go anywhere near close to
16 showing that the guy whose face is hardly visible is the face
17 of our client, Elgin Brack. It's just not there. The guy
18 Elgin Brack, Mr. Dinero trail, making in one clip almost
19 \$5,000 gross in a two-week period, all for \$1300 that he
20 presumably had to split with Scheming Scott.

21 Ladies and gentlemen, the case won't make sense and
22 I'm going to leave you with one teaser. You know I like the
23 movies so, I don't want to spoil it. But you're going to see
24 at one point, one piece of evidence that's going to show that
25 Elgin Brack could not have committed these crimes and that

Opening Statement - Farrell

38

1 will give you all the reasonable doubt you need.

2 Thank you very much for your attention.

3 THE COURT: Thank you, Mr. Farrell.

4 All right. Ladies and gentlemen, after the openings
5 come the beginning of the Government's case. We will start
6 that up. Normally -- to give you a little preview of
7 scheduling, normally we will take, and we will -- take a
8 midmorning break and a lunch break and a midafternoon break
9 and we generally end up, depending on where the testimony
10 takes us, closing the day somewhere between 5:00 and 5:30.
11 But these are not hard and fast rules. They are sort of
12 targets and we adjust them as circumstances warrant.

13 Mr. Selden, are you handling the first witness?

14 MR. STEIN: Yes, Your Honor.

15 THE COURT: Call your witness to get us started.

16 MR. STEIN: Thank you very much, Your Honor.

17 The Government calls Police Officer Ruyi Wang. I ask
18 the Court's indulgence while we step outside.

19 (Pause in the proceedings.)

20 (Witness enters and takes stand.)

21 THE COURTRoom DEPUTY: Raise your right hand,
22 please.

24 (Continued on following page.)

Wang - direct - Selden

39

1 | RUYI WANG,

2 called as a witness having been
3 first duly sworn, was examined and testified
4 as follows:

5 THE COURTROOM DEPUTY: Please state your first and
6 last name and spell for the record.

7 THE WITNESS: Ruyi Wang, R-U-Y-I, W-A-N-G.

8 THE COURTROOM DEPUTY: Thank you. Have a seat,
9 please.

10 | THE COURT: Mr. Selden, you may inquire.

11 MR. SELDEN: Thank you very much, Your Honor.

12 DIRECT EXAMINATION

13 | BY MR. SELDEN:

14 Q Good morning.

15 A Good morning.

16 Q Sir, where are you from?

17 A Queens, New York.

18 Q Where did you go to school?

19 A John Jay College.

20 | Q Did you graduate from John Jay College?

21 A Yes, I did.

22 | Q Following John Jay College, what did you do?

23 A Served in the United States Marine Corps.

24 Q Are you still in the United States Marine Corps?

25 A Yes, I am.

Wang - direct - Selden

40

1 Q Besides your service in the United States Marine Corps,
2 are you presently employed in any other way?

3 A Yes, I am.

4 Q How are you presently employed?

5 A New York City Police Department.

6 Q What is your rank in the New York City Police Department?

7 A Police officer.

8 Q Where do you work on behalf of the New York City Police
9 Department?

10 A The 108 Precinct.

11 Q Officer Wang, speak a little bit more slowly for the
12 court reporter, please.

13 A Absolutely.

14 Q Thank you.

15 You mentioned the 108th Precinct. What exactly is
16 the 108th Precinct? Where is it located?

17 A In the confines of Queens.

18 Q Would you give us the neighborhoods in the 108th
19 Precinct?

20 A Yes. Long Island City, Sunnyside and Woodside.

21 Q Officer Wang, I want to turn your attention to
22 November 26th, 2018.

23 Where were you working in the early morning hours of
24 that day?

25 A I was working within the confines of the 108 Precinct.

Wang - direct - Selden

41

1 Q What was your particular shift that day?

2 A I was assigned to midnight patrol from 11:15 at night to
3 7:15 in the morning.

4 Q Turn your attention to approximately 3:30 that morning.

5 Where were you working?

6 A I was working within the confines of the 108th Precinct
7 in Woodside.

8 Q Did you have an opportunity to respond to any call for
9 service that particular day at that particular time?

10 A Yes, I did.

11 Q Where did you respond to?

12 A I responded to 60-02 Roosevelt Avenue.

13 Q What's located at 60-02 Roosevelt Avenue?

14 A A Duane Reade pharmacy.

15 Q What did you observe when you arrived at that Duane Reade
16 pharmacy?

17 A I observed a man laying on the sidewalk covered in blood.

18 Q Did you come to learn how he was covered in blood?

19 A I learned later that he had sustained a gunshot wound.

20 Q Where was that gunshot wound?

21 A The left hand and the head.

22 Q Did you eventually come to learn that person's name?

23 A Yes, I did.

24 Q How did you learn that?

25 A I recovered his identification from his pocket.

Wang - direct - Selden

42

1 Q Do you remember that person's name?

2 A Yes, I do.

3 Q What was that person's name?

4 A Mr. Alejandro Deleon.

5 Q We'll get back to how you recovered Mr. Deleon's
6 identification in a moment, but upon arriving and seeing
7 Mr. Deleon, as you described, covered in blood, what did you
8 do next?

9 A I interviewed immediate witnesses on scene and canvassed
10 the pharmacy.

11 Q Who did you interview?

12 A Employees, whoever was on scene; asked them if anything
13 happened.

14 Q How did they appear to you physically before you
15 interviewed them?

16 A They were excited and frantic.

17 Q What, if anything, was relayed to you by those employees?

18 A The employees --

19 MR. STEIN: Objection. Excuse me. Objection.

20 THE COURT: Sustained.

21 MR. SELDEN: Your Honor, I believe there is a
22 foundational basis upon which Officer Wang can testify. A
23 moment ago he explained the employees appeared excited and
24 shaken.

25 THE COURT: Yes.

Wang - direct - Selden

43

1 MR. SELDEN: Your Honor --

2 THE COURT: Not what they said.

3 MR. SELDEN: Your Honor, the Government would move
4 pursuant to an excited utterance to bring in the witness's
5 statements to Officer Wang.

6 MR. STEIN: Objection, Judge. It sounds to me like
7 we're going to hear a narrative.

8 THE COURT: Why don't we hear you at side-bar.

9 (Side-bar conference held on the record out of the
10 hearing of the jury.)

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12 (Continued on following page.)

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Side-Bar

44

1 (Side-bar.)

2 MR. SELDEN: Your Honor, I believe the Government
3 has laid a foundation for an excited utterance. Specifically,
4 the witness was asked how did the particular employees appear
5 and the witness testified that they appeared shaking and
6 excited. Hence, the Government believes that an excited
7 utterance from those witnesses, not a narrative as Mr. Stein
8 has described, would be the basis upon which to allow their
9 statements to come in.

10 MR. STEIN: Well, Judge, that avoids the whole
11 issue, which is what is this witness going to say that the
12 other employees said? The fact, in and of itself, that they
13 were upset or frantic, excited.

14 THE COURT: Yes, there is really no showing here of,
15 for example, how long the conduct took place before the time
16 the police officer observed it, number one.

17 And this is -- they are now responding -- they are
18 not making utterances. They are answering questions. That is
19 not an utterance, that is a response.

20 MR. SELDEN: And Your Honor, beyond their physical
21 state, I would be happy to ask the witness how long it took
22 him, approximately, to arrive on scene.

23 THE COURT: From the call?

24 MR. SELDEN: From the call, absolutely.

25 THE COURT: And no one knows when the call was made

Side-Bar

45

1 in connection to when the shot was fired. You are not going
2 to lay a foundation there.

3 And again, these so-called utterances are in
4 response to questions.

5 MR. SELDEN: Your Honor, I believe the witness would
6 testify that those individuals stated that they heard, but
7 were not present for several gunshots and that they were not
8 present for the actual gunshots. That's the basis upon which
9 the Government believes the witness will testify. But if the
10 Court does not believe the excited utterance --

11 THE COURT: Yes, I do not believe that creates an
12 excited utterance at all.

13 MR. SELDEN: Of course, Your Honor. Happy to move
14 on.

15 THE COURT: If the point is to say that they did not
16 hear the gunshot, I do not think Mr. Stein cares about that.

17 MR. STEIN: No, not particularly.

18 MR. SELDEN: I think that's essentially what the
19 point is.

20 THE COURT: Did you hear a gunshot?

21 MR. SELDEN: That they heard a gunshot.

22 THE COURT: They did hear a gunshot?

23 MR. SELDEN: They did hear a gunshot. That's it.

24 MR. STEIN: If that's it, that's fine.

25 THE COURT: That is not a statement. That is what

Side-Bar

46

1 they heard.

2 MR. SELDEN: Absolutely, Your Honor.

3 So Your Honor, just so that I'm clear, we'll proceed
4 by asking the witness if any of the witnesses indicated that
5 they had heard a gunshot. We'll start off at that point, if
6 that's okay with the Court.

7 THE COURT: Do you have a problem with that?

8 MR. STEIN: No.

9 THE COURT: All right.

10 (Side-bar end.)

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12 (Continued on following page.)

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Wang - direct - Selden

47

1 (In open court.)

2 THE COURT: Ladies and Gentlemen of the Jury, you
3 heard in the instructions that there are basically two parts
4 to every case. One involves the facts, which is for your
5 consideration, and there are other legal issues that involve
6 the lawyers and the Court, and those issues are often taken at
7 side-bar out of your hearing, but not out of your sight.
8 Sometimes we actually have to handle them out of both your
9 hearing and your sight so we will send you back to the jury
10 room, but whatever happens over here has no effect on you and
11 should be of no concern to you.

12 Many of the huddles that we have over here are
13 designed, ultimately, to shorten and make the case more
14 efficient, which is why we have the huddles over here. Many
15 times we might need them and we have been able to accomplish
16 that objective this morning and so if you see us having those
17 little huddles in the future, do not think we are wasting
18 time. We are actually speeding it up.

19 So pursuant to our huddle, Mr. Selden, you may
20 proceed.

21 MR. SELDEN: Thank you very much, Your Honor.

22 BY MR. SELDEN:

23 Q Officer Wang, briefly, did those witnesses that you speak
24 with indicate whether or not they had heard gunshots?

25 A Yes, they did.

Wang - direct - Selden

48

1 Q Officer Wang, I want to turn you back to the Duane Reade
2 you just described.

3 MR. SELDEN: And Mr. Villanueva, for identification
4 purposes only, will you please put Government Exhibit 106-A,
5 and specifically on the screen for Officer Wang.

6 Q Officer Wang, do you remember what the Duane Reade looks
7 like that morning?

8 A Yes, I do.

9 Q I am now turning your attention to 106-A.

10 MR. SELDEN: For the record, a copy of Government
11 Exhibit 106-A has been provided to the defense.

12 Q Do you recognize what I've just shown you?

13 A Yes, I do.

14 Q How do you recognize it?

15 A I recognize it as a photograph of the Duane Reade
16 pharmacy as I responded that night.

17 Q Is it a fair and accurate depiction of the outside of
18 that Duane Reade you responded to on November 26th, 2018, at
19 approximately 3:30 in the morning?

20 A Yes, it is.

21 MR. SELDEN: Your Honor, at this time the Government
22 moves to admit Government's Exhibit 106-A into evidence.

23 THE COURT: Any objection?

24 MR. STEIN: No.

25 THE COURT: Received without objection.

Wang - direct - Selden

49

1 (Government Exhibit 106-A received in evidence.)

2 MR. SELDEN: Thank you, Your Honor.

3 With the Court's permission, may I now publish this
4 photograph to the jury?

5 THE COURT: You may indeed.

6 (Exhibit published.)

7 MR. SELDEN: Thank you. Mr. Villanueva, with your
8 assistance, we have it queued up on the Government's laptop.

9 (Exhibit published.)

10 BY MR. SELDEN:

11 Q Officer Wang, please briefly describe -- and there is a
12 screen in front of you -- what you see to the Ladies and
13 Gentlemen of the Jury?

14 A I see the front of the photograph, the front of the store
15 that I responded to that night.

16 MR. STEIN: Excuse me, Judge, sorry. It's not on
17 our screens, should it be?

18 THE COURTRoom DEPUTY: It should be.

19 THE COURT: We are having some technical issues.

20 (Pause in the proceedings.)

21 MR. STEIN: Thank you.

22 THE COURTRoom DEPUTY: It's good.

23 MR. SELDEN: Thank you, Mr. Villanueva.

24 Q Officer, a moment ago you had described arriving on scene
25 and seeing Mr. Deleon covered in blood.

Wang - direct - Selden

50

1 A Yes.

2 Q Where, if at all in Government Exhibit 106-A -- and you
3 have a touch screen in front of you that you can utilize --
4 where were you able to see Mr. Deleon?

5 A Approximately right over here.

6 MR. SELDEN: And for the record, if you are able to
7 identify whether or not there is an item next to where you
8 just circled on Government Exhibit 106-A.

9 THE WITNESS: Yes, a bicycle to the left.

10 MR. SELDEN: Your Honor, for the record, the witness
11 has just provided a circle in what appears to be in the middle
12 of the sidewalk next to a bicycle.

13 THE COURT: The record will reflect.

14 BY MR. SELDEN:

15 Q Now, when you saw Mr. Deleon at that particular location
16 when you arrived, were you able to speak with him?

17 A No, I was not.

18 Q Why not?

19 A His speech was incoherent. He wasn't able to talk.

20 Q Following that interaction, did you search for evidence?

21 A I tried to.

22 Q What, if anything, did you do?

23 A I went to the store, really started to look around to see
24 if I find evidence of what had happened.

25 Q I see on the outside of Government Exhibit 106-A, outside

Wang - direct - Selden

51

1 of the store, there appears to be yellow tape with: Police
2 Line Do Not Cross?

3 A Yes.

4 Q Was that tape placed when you were there?

5 A Yes, it was.

6 Q A moment ago you mentioned that you had found out
7 Mr. Deleon's name.

8 Can you remind the ladies and gentlemen how you
9 determined that?

10 A Yes. I, on arriving to the hospital, I went to his
11 pocket, recovered his identification card.

12 Q How did you go to the hospital?

13 A I transported Mr. Deleon to the hospital via ambulance.

14 Q Now, for identification purposes only --

15 MR. SELDEN: I'm going to ask Mr. Villanueva in a
16 for a moment to pull up Government Exhibit 106-B for the
17 witness.

18 Q Turning your attention to Government Exhibit 106-B --

19 MR. SELDEN: For the record, a copy of Government
20 Exhibit 106-B has been provided to the defense.

21 Q Officer Wang, do you recognize what we're showing you in
22 Government Exhibit 106-B?

23 A Yes, I do.

24 Q How do you recognize it?

25 A I recognize it to be a photograph of Mr. Deleon's

Wang - direct - Selden

52

1 identification card.

2 Q Is it a fair and accurate representation of a photograph
3 or of the identification, I should say, from that evening?

4 A Yes, it is.

5 MR. SELDEN: Your Honor, at this time the Government
6 moves to admit 106-B into evidence.

7 THE COURT: Any objection?

8 MR. STEIN: No.

9 THE COURT: Received without objection.

10 (Government Exhibit 106-B received in evidence.)

11 MR. SELDEN: Your Honor, with the Court's permission
12 to publish 106-B to the jury?

13 THE COURT: You have it.

14 MR. SELDEN: Thank you.

15 (Exhibit published.)

16 BY MR. SELDEN:

17 Q Officer Wang, what do we see in 106-B?

18 A It's a photo of Mr. Deleon's identification card.

19 Q Is that how Mr. Deleon looked to you that evening?

20 A No.

21 Q Officer Wang, when you traveled to the hospital, where
22 did you go specifically in the hospital?

23 A Elmhurst General Hospital in the ER.

24 Q ER, is that the emergency room?

25 A Yes, it is.

Wang - cross - Farrell

53

1 MR. SELDEN: I have no further questions for Officer
2 Wang at this time.

3 THE COURT: Thank you, Mr. Selden.

4 MR. SELDEN: Thank you.

5 THE COURT: Any cross?

6 MR. FARRELL: Just a few, Your Honor.

7 THE COURT: Mr. Farrell.

8 MR. FARRELL: May I ask from here, Judge? It's just
9 a few or would you like me to use the podium. I will use the
10 podium.

11 THE COURT: It is easier to use the podium, then we
12 have a uniformity and you never know when all of a sudden you
13 want to show something and there you are.

14 MR. FARRELL: Yes, you are right.

15 Mr. Villanueva, if we could just put down the --
16 thank you so much.

17 CROSS EXAMINATION

18 BY MR. FARRELL:

19 Q Good morning, Officer Wang.

20 A Good morning, sir.

21 Q My name is Gary Farrell. You and I have never met or
22 discussed the case; correct?

23 A We have not.

24 Q You are in a uniform command; is that correct?

25 A That's correct.

Wang - cross - Farrell

54

1 Q So you don't normally dress like you are today; right?

2 A No, I don't.

3 Q These are your special courtroom clothes?

4 A Yes, it is.

5 Q This is your day off really; right?

6 A Yes, it is.

7 Q Time-and-a-half?

8 A Yes.

9 Q Okay. In fact, on this -- what shift were you working
10 the day of this incident?

11 A The midnight shift.

12 Q Were you driving a marked patrol car?

13 A Yes.

14 Q And did you have a partner with you?

15 A Yes, I did.

16 Q Who was that?

17 A Officer Scavetta.

18 Q And is it your testimony that you believe you were the
19 first police officers, either the first police or EMS or fire
20 department, you were the first responder in this case;
21 correct?

22 A I believe so, yes.

23 Q Did you ride in the ambulance with Mr. Deleon?

24 A Yes.

25 Q You said you made a -- you did make an attempt to look

Wang - cross - Farrell

55

1 for evidence inside the store; correct?

2 A I did.

3 Q And in so doing, did you notice the presence of blood by
4 the counter, you know, where people --

5 A Yes.

6 Q You actually did.

7 And how would you describe it? I know it's almost
8 well over a year ago. What do you -- how do you recall how
9 the blood looked?

10 A It was a lot of blood by the register; all over the
11 floors, walls.

12 Q Anyone from law enforcement stay at the Duane Reade to
13 make sure the scene was not tampered with when you left with
14 Mr. Deleon to the hospital?

15 A That, I do not know.

16 Q Did your partner go with you to the hospital with
17 Mr. Deleon?

18 A No.

19 Q What did he do?

20 A He prepared reports.

21 Q But did he stay at Duane Reade?

22 A I don't know that.

23 Q Do you remember any plainclothes detectives coming in
24 from -- you know, what the Crime Scene Unit is --

25 A Yes.

Wang - cross - Farrell

56

1 Q -- being an experienced police officer now.

2 Do you recall any members of the Crime Scene Unit
3 coming to the store --

4 A No.

5 Q -- while you were there?

6 How long do you think you were there in the entirety
7 of your visit?

8 A Of the store.

9 Q Yes.

10 A Approximately 15 to 30 minutes.

11 Q And did it take that long for an ambulance to come to
12 help this guy?

13 A No.

14 Q When did the ambulance come? In relation to when you
15 were there?

16 A Shortly after I arrived on scene.

17 Q And they attended to Mr. Deleon on the street first;
18 correct?

19 A Yes.

20 Q And then they loaded him into the ambulance?

21 A Yes.

22 Q And you went in there with him?

23 A Yes.

24 Q But I think you just testified, correct me if I'm wrong,
25 that took a half-hour like from the time you first got there

Wang - redirect - Selden

57

1 to the time the ambulance left?

2 A Approximately.

3 Q Were you in charge of collecting Mr. Deleon's clothes?

4 A No.

5 Q As you recall -- and again I know it was a long time
6 ago -- what was he wearing when you first observed him in
7 terms of what he was wearing? Did he appear fully dressed;
8 pants, shirt?

9 A He appeared fully-dressed.

10 Q Okay. Shoes too?

11 A I don't recall. I don't remember.

12 MR. FARRELL: That's all. Thank you.

13 THE COURT: Thank you, Mr. Farrell.

14 Mr. Selden, any cross?

15 MR. SELDEN: Brief redirect, Your Honor.

16 THE COURT: Redirect, I mean.

17 MR. SELDEN: Thank you, Your Honor.

18 THE COURT: You can do that, too.

19 REDIRECT EXAMINATION

20 BY MR. SELDEN:

21 Q Officer Wang, you recall the line of cross-examination by
22 Mr. Farrell asking about other people who were present at the
23 Duane Reade from the New York City Police Department.

24 Do you recall that line of cross-examination?

25 A Yes, I do.

Wang - recross - Farrell

58

1 Q Were you the only responding officer who was there, for
2 example, setting up the crime screen tape?

3 A No.

4 Q Were you the only responding officer there who was
5 standing outside of the Duane Reade at the time when you were
6 first dealing with Mr. Deleon?

7 A No.

8 Q Were there other, besides New York City Police Officers,
9 other higher-ranking officers on the scene in response to the
10 shooting?

11 A Yes.

12 Q Do you know every interaction that those particular
13 officers had as it relates to the investigation?

14 A I do not.

15 MR. SELDEN: Officer Wang, I have no further
16 questions for you at this time.

17 Thank you, Your Honor.

18 THE COURT: Anything, Mr. Farrell?

19 MR. FARRELL: Yes. Very briefly, Judge, one
20 question.

21 RECROSS EXAMINATION

22 BY MR. FARRELL:

23 Q Officer Wang, if I were to ask you to name -- well, I'm
24 asking you -- if you could name all of those officers, you
25 wouldn't be able to do that; right?

Proceedings

59

1 A A few, but not all of them.

2 Q All right. Give me the few you've got.

3 A Sergeant Egan, Officer Scavetta, Officer Morton,
4 Officer Del Rio.

5 Q Were they all uniformed officers from your command?

6 A Yes.

7 Q At the risk of repetition, you didn't see any crime scene
8 detectives there while you were at the Duane Reade?

9 A No.

10 MR. FARRELL: Okay. Thank you.

11 THE COURT: Mr. Selden?

12 MR. SELDEN: Nothing further, thank you, Your Honor.

13 THE COURT: Officer Wang, thank you very much. You
14 are excused.

15 THE WITNESS: Thank you, Your Honor.

16 (Witness excused.)

17 THE COURT: All right. Ladies and gentlemen, that
18 sort of brings us to around the time we would normally take
19 our midmorning break. So we will take our midmorning break.

20 You will hear instructions from me at each break and
21 the reason I repeat them is because they are important. So it
22 is really important that we do not get to believe that this
23 routine, we can disregard them. They are extremely important
24 and I will continue to remind you of them.

25 First is that you are to continue to keep an open

Proceedings

60

1 mind throughout this case, not only on the first day but
2 throughout each and every day of the trial.

3 Secondly, you are not to discuss this case amongst
4 yourselves or with anyone else you may run into in the back,
5 including staff of the Court. You can go back to the jury
6 room. There are a couple of other rooms there you might need
7 to help refresh. We will take about a 10 or 15-minute break
8 and we shall resume before the lunch period.

9 Again, we thank you for your patience and
10 attentiveness and refresh, and we will see you in about 10 or
11 15 minutes.

12 THE COURTROOM DEPUTY: All rise.

13 (In open court; outside the presence of the jury.)

14 THE COURT: Okay. We will see you in about 10 or
15.

16 ALL: Thank you, Your Honor.

17 (Recess taken.)

18 (In open court; outside the presence of the jury.)

19 (Judge ERIC N. VITALIANO enters the courtroom.)

20 THE COURTROOM DEPUTY: All rise.

21 Court is back in session. Counsel for both sides
22 are present, including defendant.

23 THE COURT: Are you ready, Mr. Selden?

24 MR. SELDEN: Thank you, Your Honor, we are.

25 As a preview to the Court, we're going to start out

Proceedings

61

1 with a brief stipulation and several exhibits that have been
2 stipulated to.

3 THE COURT: One of my favorite words.

4 MR. SELDEN: Thank you, Your Honor.

5 With Mr. Villanueva's always help, I will ask to use
6 the lectern, specifically the overhead, to read those
7 stipulations into the record for the jury.

8 THE COURT: We will try our best.

9 All right. Mr. Villanueva, let's get the jury and
10 go from there.

11 We are going to try to end the morning session
12 around 12:55 or so.

13 MR. LAX: Your Honor, after the stipulations, our
14 next witness, I think, will be maybe just under an hour, so we
15 might get to 12:45 and it might make sense to break at that
16 point.

17 THE COURT: That somewhat helps.

18 (Jury enters.)

19 THE COURT: Be seated please.

20 Counsel will stipulate that the jury is present and
21 properly seated.

22 MR. SELDEN: Thank you, Your Honor.

23 MR. STEIN: Yes, Judge.

24 THE COURT: Thank you, counsel.

25 All stipulated that the jury is present and

Proceedings

62

1 Mr. Selden, let's -- I understand you have stipulations for
2 us.

3 MR. SELDEN: We do. Thank you, Your Honor.

4 Your Honor, at this time the Government moves to
5 read the following stipulation into evidence and with
6 Mr. Villanueva's assistance, that would be Government
7 Exhibit Stipulation No. S-11, and I will read, and then at the
8 same time publish to the Ladies and Gentlemen of the Jury the
9 stipulation and the applicable exhibits.

10 (Exhibit published.)

11 MR. SELDEN: It is hereby stipulated and agreed by
12 and between the United States of America and the defendant,
13 Elgin Brack, through his attorneys, that:

14 Government Exhibit 133-A consists of a true and
15 accurate copy of an X-ray image of Alejandro Deleon's skull
16 taken from Elmhurst Hospital Center emergency room on
17 November 26, 2018, that includes bullet fragments located
18 inside his skull from a shooting on that same date.

19 Government Exhibit 133-B consists of a true and
20 accurate copy of Elmhurst Hospital Center records,
21 specifically, a property form for bullet fragments recovered
22 from Alejandro Deleon's skull on November 26, 2018.

23 Government Exhibits 133-A and 133-B were made at or
24 near the time of the occurrences referenced above by, or from
25 information transmitted by, a person with knowledge of the

Proceedings

63

1 matters described therein. Making and maintaining such
2 records was a regular part of Elmhurst Hospital Center's
3 business and operations.

4 Government Exhibits 133-A and 133-B, as well as this
5 stipulation, marked as Government's Exhibit S-11, are
6 admissible in evidence.

7 Dated March 3rd, 2020. Agreed and consented to by
8 the parties.

9 Your Honor, I will now move to publish Government's
10 Exhibit 133-A --

11 (Exhibits published.)

12 MR. SELDEN: -- for the Ladies and Gentlemen of the
13 Jury.

14 THE COURT: Those exhibits and the stipulation are
15 received in evidence without objection and you may publish
16 those exhibits to the jury.

17 MR. SELDEN: Thank you, Your Honor.

18 (Government's Exhibits S-11, 133-A and 133-B
19 received in evidence.)

20 MR. SELDEN: I am pointing to the top of Government
21 Exhibit 133-A. Specifically this is referenced in the prior
22 stipulation.

23 I am now moving to publish, with the Court's
24 permission, 133-B, previously represented in a prior
25 stipulation.

Proceedings

64

1 THE COURT: You may.

2 MR. SELDEN: Thank you, Your Honor.

3 (Exhibit published.)

4 MR. SELDEN: Now, pointing to 133-B.

5 Thank you, Your Honor.

6 MR. SIEGEL: Your Honor, at this point I am going to
7 read a stipulation.

8 THE COURT: Mr. Siegel.

9 MR. SIEGEL: And Your Honor, with the Court's
10 permission, I would just like to move this screen so that I
11 can look as well while I publish to the jury.

12 THE COURT: You can.

13 (Exhibit published.)

14 MR. SIEGEL: Your Honor, at this time I would like
15 to read Government Exhibit S-9, which a stipulation between
16 the parties. The stipulation reads:

17 It is hereby stipulated and agreed, by and between
18 the United States of America and the defendant, Elgin Brack,
19 through his attorneys, that:

20 The following Government Exhibits (collectively, the
21 surveillance video exhibits) are true and accurate copies of
22 excerpts of surveillance videos. These surveillance video
23 exhibits fairly and accurately depict events that occurred on
24 November 26th, 2018, at the locations identified in the below
25 chart.

1 Where a surveillance video exhibit includes a time
2 stamp, the below charts indicates if the time stamp, as
3 compared to the actual time of reported events, is
4 approximately accurate, fast (ahead of the actual time) or
5 slow (behind the actual time), and by approximately how much
6 time.

7 Where a surveillance video exhibit does not include
8 a time stamp, the approximate start time for the video is
9 indicated in the below chart.

10 Your Honor, on the second page is a chart that
11 continues onto the third page. I am not going to read every
12 one of these, but I will read the exhibit numbers for them to
13 be in the record. Those exhibits are 402-A, 402-B, 402-C,
14 402-D, 402-F, 402-G, 402-H, 402-I, and as set forth in the
15 chart, all of those 402 exhibits are from inside a Duane Reade
16 at 60-02 Roosevelt Avenue in Queens.

17 There's also Exhibits 408-A, 408-B, 408-C, 408-D,
18 408-E, and as set forth in the stipulation, all of those
19 exhibits are from inside a 7-Eleven at 50-92 Northern
20 Boulevard, Queens.

21 Exhibits 410-A, 410-B, 410-C, 410-D, which are in
22 all of those 410 exhibits are from United Fruit Brothers at
23 32-24 30th Avenue as southwest corner of 30th Avenue and
24 33rd Street in Queens.

25 411-A, 411-B, 411-C and each of those 411 exhibits

Proceedings

66

1 are from a Rite-Aid at 33-01 30th Avenue, Queens.

2 414-A, 414-B, and each of those exhibits are from
3 inside a Rite-Aid at 115-10 Merrick Boulevard, Queens.

4 And 415-A, 415-B, which are from a camera at the
5 southeast corner of 115th and Merrick Boulevard in Queens.

6 The surveillance video exhibits, as well as this
7 stipulation marked as Government's Exhibit S-9, are admissible
8 in evidence.

9 Dated Brooklyn, New York, February 27th, 2020, and
10 agreed and consented to by the parties.

11 THE COURT: That stipulation and those exhibits
12 named in it are all received in evidence without objection.

13 (Government's Exhibits S-9, 402-A, 402-B, 402-C,
14 402-D, 402-F, 402-G, 402-H, 402-I, 408-A, 408-B, 408-C, 408-D,
15 408-E, 410-A, 410-B, 410-C, 410-D, 411-A, 411-B, 411-C, 414-A,
16 414-B, 415-A, 415-B received in evidence.)

17 MR. SIEGEL: And Your Honor, at this time the
18 Government calls Detective Jerry St. Louis.

19 (Witness enters and takes stand.)

21 (Continued on following page.)

22

23

24

25

St. Louis - direct - Siegel

67

1 (Continuing)

2 THE COURTROOM DEPUTY: Stand right there, please.

3 Raise your right hand.

4 (Witness sworn.)

5 THE COURTROOM DEPUTY: Please state your first and
6 last name and spell it for the record.

7 THE WITNESS: Jerry St. Louis. First name is
8 J-E-R-R-Y, S-T, period, L-O-U-I-S.

9 THE COURTROOM DEPUTY: Thank you. Please be seated.

10 THE COURT: Mr. Siegel, you may inquire.

11 MR. SIEGEL: Thank you, Your Honor.

12 **JERRY ST. LOUIS,**

13 called by the Government, having been duly
14 sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SIEGEL:

17 Q Sir, where do you work?

18 A NYPD.

19 Q Is that the New York City Police Department?

20 A Yes.

21 Q What is your rank with the NYPD?

22 A I'm a detective.

23 Q How long have you been with the NYPD?

24 A Approximately 16 years.

25 Q Are you a member of any specialized teams within the

St. Louis - direct - Siegel

68

1 NYPD?

2 A Yes.

3 Q What team that?

4 A Crime Scene Unit.

5 Q What is the Crime Scene Unit?

6 A We basically respond to the scene to document, take
7 photographs, so that later on we can recreate the scene.

8 Q And you said -- I believe you said you document and take
9 photographs?

10 A Correct.

11 Q Do you also collect evidence at the scene?

12 A Yes.

13 Q And just for abbreviation, is the Crime Scene Unit also
14 known as CSU?

15 A Yes.

16 Q Did you receive training to be part of CSU?

17 A Yes.

18 Q What training did you receive?

19 A How to dust for fingerprints, fingerprints, swab DNA and
20 basically photograph, documents -- I'm sorry, document the
21 scenes.

22 Q Do you receive classroom training?

23 A Yes.

24 Q In addition to classroom training, what other kind of
25 training do you receive?

St. Louis - direct - Siegel

69

1 A Basically I do footwear impression, laser trajectory, and
2 basically how to document the scene of a crime scene.

3 Q In addition to the training in the classroom, do you also
4 receive training on the job?

5 A Yes.

6 Q How long do you receive training on the job for?

7 A Six, seven months.

8 Q In addition to the training in the classroom and training
9 on the job, is there any other training that you have
10 undergone as part of your job at CSU?

11 A Yes.

12 Q What training is that?

13 A It's radioactive training and basically arson training.

14 Q Where did you get that training?

15 A One was in Las Vegas and one was in Atlanta.

16 Q And when you say radioactive training, what is that?

17 A That's basically like biohazard. God forbid something
18 were to happen in terms of chemical reaction, how to respond
19 to that crime scene.

20 Q How long have you been in CSU?

21 A I have been in CSU for seven years.

22 Q Does CSU respond to every single type of crime?

23 A Somewhat, yes.

24 Q Let me ask you a question. Is there another group called
25 the Evidence Collection Team?

St. Louis - direct - Siegel

70

1 A Yes.

2 Q What is the distinction between the Evidence Collection
3 Team and CSU?

4 A Crime scene responds to more fatal crimes. If the
5 complainant is likely to die, homicides, arsons, rapes,
6 newsworthy incidents.

7 ECT responds to more like crime arsons from autos
8 and burglaries.

9 Q And you said ECT. Is ECT the abbreviation for the
10 Evidence Collection Team?

11 A Correct.

12 Q Just at a high level, what is it that CSU does when it
13 arrives at the scene?

14 A We confer with the detective at the scene. So we
15 basically confer with each other in terms of what evidence
16 needs to be collected and how it's basically documented at the
17 scene and also photographed at the scene in terms of the
18 evidence collected.

19 Q When you collect evidence, do you follow any particular
20 procedures in the way you collect evidence?

21 A Yes.

22 Q What procedures do you follow?

23 A We confer with the detectives and then we basically take
24 photos. After we take photos, we place photo placards in
25 terms of evidence we're going to bring in and we collect the

St. Louis - direct - Siegel

71

1 evidence.

2 Q What are photo placards?

3 A Photo placards is basically like numbers that we place
4 down in terms of what we are going to collect.

5 Q When you collect the evidence, do you wear gloves?

6 A Yes.

7 Q Why do you wear gloves?

8 A So we don't contaminate the scene in terms of leaving our
9 skin cell behind at the location.

10 Q In addition to gloves, is there any other clothing that
11 you wear as part of your work with CSU?

12 A Yes.

13 Q What clothing is that?

14 A It's called a Tyvek suit. It's like a spaceman suit.

15 Q In addition to wearing gloves and the Tyvek suit, are
16 there tools that you use to collect evidence?

17 A Yes.

18 Q What tools do you use to collect evidence?

19 A We use basically sanitized tweezers, basically freshly
20 packaged, so we can pick up the item. Of course we use
21 gloves, masks, so we don't contaminate the evidence.

22 Q After you pick up an item with gloves and the sanitized
23 tweezers, what do you do with the item?

24 A Basically, we package the item.

25 Q What do you package the item in?

St. Louis - direct - Siegel

72

1 A If it's clothing, it's a brown bag. If it's ballistics,
2 it's basically a clear plastic bag.

3 Q Do those bags get sealed?

4 A Yes.

5 Q Do you put any markings on the bag to keep track of what
6 the evidence is?

7 A Yes.

8 Q What kind of markings do you put on the bag?

9 A So, my first name is Jerry and my last name is St. Louis.
10 I would mark it my initials, so it would be JSL-1 and so on.

11 Q When you say so on, the first one would be JSL-1?

12 A JSL-1 continuous, JSL-2, 3, and on.

13 Q Let me direct your attention to November 26, 2018. Were
14 you working that day?

15 A Yes.

16 Q Were you sent out to a crime scene?

17 A Yes.

18 Q Where was the crime scene that you were sent out?

19 A It was at 60-02 Roosevelt Avenue.

20 Q In what borough?

21 A Queens.

22 Q And what was that location?

23 A It was a Duane Reade's location.

24 Q What was the status of the scene when you arrived?

25 A It was basically surrounded with crime tape, crime scene

St. Louis - direct - Siegel

73

1 tape, and also safeguarding officers, like cops, NYPD officers
2 to safeguard the scene.

3 Q What is crime scene tape?

4 A It basically blocks off from anybody coming in the scene
5 to contaminate the scene.

6 Q You mentioned safeguarding officers. What are
7 safeguarding officers?

8 A That's NYPD officers, so they don't let anybody interfere
9 in terms of touching evidence at the scene.

10 Q Were you there when the crime scene tape was put up?

11 A I came after the fact. When I came there, the crime
12 scene tape was already put up.

13 Q From your understanding of the procedures of the NYPD,
14 once the crime scene tape goes up, are people other than
15 police officers allowed in to the scene?

16 A No.

17 Q So when you arrived at the scene, what was the first
18 thing you did?

19 A I conferred with the detective at the scene. We
20 basically conferred with one another in terms of what needs to
21 be collected. We looked at the surveillance video on what
22 happened and from then on we decided to pick up the evidence
23 on what we saw through the video.

24 Q As part of those conferrals and watching the surveillance
25 video, did you confirm that the scene had been safeguarded?

St. Louis - direct - Siegel

74

1 A Yes.

2 Q Why was it that you were watching the surveillance video?

3 A So it can basically aid us in collecting the evidence at
4 the scene.

5 Q Can you explain that a little bit?

6 A If he touched an item or he dropped an item, that would
7 basically help me in terms of collecting the evidence at that
8 scene.

9 Q As part of your work with crime scene, did you also take
10 photographs of the scene and other evidence?

11 A Yes.

12 Q Why is it that you take photographs?

13 A Just to be -- so, for instance, like when we come to the
14 scene, we can basically show everybody this is how the
15 location was when we got to the scene.

16 Q So I'd like to hand you a CD, which would be contains
17 Government Exhibit 106-A, Government Exhibit 126, Government
18 Exhibit 127, Government Exhibit 300-A, Government Exhibit
19 300-B, Government Exhibit 301-A, 301-B, 301-C, 302-A, 302-C,
20 302-D, and 302-E.

21 MR. SIEGEL: And this CD was previously shown to
22 defense counsel. I'd like to hand the CD to the witness with
23 the Court's permission.

24 THE COURT: You may.

25 MR. SIEGEL: Your Honor, may I inquire from standing

St. Louis - direct - Siegel

75

1 by the witness just to collect the evidence when he is done
2 with it?

3 THE COURT: If it will expedite matters, please.

4 Q Sir, do you recognize that?

5 A Yes.

6 Q How do you recognize it?

7 A It has my signature on it.

8 Q And what is on that CD?

9 A My photographs that I took at the crime scene.

10 Q Are the photographs on that CD fair and accurate
11 depictions of what you saw at the crime scene that day?

12 A Yes.

13 Q Thank you.

14 MR. SIEGEL: Your Honor, I move that the exhibits
15 that I previously read on the CD be admitted into evidence.

16 MR. FARRELL: No objection.

17 THE COURT: No objection by the defense, those
18 exhibits are admitted into evidence.

19 (Government Exhibits 106-A, 126, 127, 300-A, 300-B,
20 301-A, 301-B, 301-C, 302-A, 302-C, 302-D, and 302-E received
21 in evidence.)

22 THE COURT: Mr. Siegel, does the CD itself have a
23 separate exhibit?

24 MR. SIEGEL: It does not have a separate exhibit,
25 but we can put one on it if the Court would prefer. It is

St. Louis - direct - Siegel

76

1 Labeled with the exhibits on it.

2 THE COURT: Then it's fine.

3 MR. SIEGEL: Mr. Villanueva, if I could have the
4 Laptop to show, please.

5 Everything I'm going to show for a little while is
6 on that CD, so it's now in evidence.

7 Q So I'm showing you Government Exhibit 106-A. What is
8 Government Exhibit 106-A?

9 A It's in front of the location, Duane Reade, 60-02
10 Roosevelt Avenue.

11 Q Is that the scene that you responded to?

12 A Yes.

13 Q And is it possible for you to see the crime scene tape
14 that you referred to?

15 A Yes.

16 Q Could you describe where you see that crime scene tape?

17 A It's in front of the Duane Reade location where the
18 incident occurred.

19 Q What color?

20 A Yellow.

21 Q Now, I'd like to show you Government Exhibit 126. What
22 is Government Exhibit 126?

23 A That's the opposite view of where -- from the other
24 photo, just basically showing the opposite view of the
25 establishment, Duane Reade.

St. Louis - direct - Siegel

77

1 Q Showing the area across the street?

2 A Correct.

3 Q Okay. So you mentioned earlier that you viewed
4 surveillance video when you arrived; is that right?

5 A Yes.

6 Q I'm showing you 402-C, which is in evidence pursuant to a
7 stipulation as evidence from inside Duane Reade. Before I
8 play it, do you recognize this opening shot?

9 A Yes, I do.

10 Q Is this surveillance video that you saw that day?

11 A Yes.

12 MR. SIEGEL: I'm going to now hit play.

13 (Video playing.) (Video paused.)

14 MR. SIEGEL: I am going to pause at the end of the
15 video.

16 Q Can you describe what you saw on the video when you were
17 at the scene that day?

18 A We basically watched the perpetrator come inside the
19 Duane Reade store and holding a bag of Skittles and basically,
20 after a few seconds of talking with the victim, goes behind
21 the counter and I guess requests for money or something and --

22 MR. STEIN: Objection.

23 MR. FARRELL: Objection.

24 THE COURT: Sustained. Don't speculate.

25 A -- basically shoots the victim and then a struggle ensues

St. Louis - direct - Siegel

78

1 and fires another shot at the victim.

2 Q I just want to -- I am going to hit play again to talk
3 about some of what you just said.

4 (Video playing.) (Video paused.)

5 Q You said before that the robber had a bag of Skittles?

6 A Correct.

7 Q On the touch screen in front of you, could you circle
8 that bag of Skittles? And the screen can be a little finicky.

9 MR. SIEGEL: For the record, he has circled in the
10 lower left-hand corner a bag.

11 Q Was that bag of Skittles still at the scene when you
12 arrived?

13 A Yes, it was.

14 MR. SIEGEL: I just stopped the video at 13 seconds
15 and I am going to hit play again.

16 (Video played.) (Video stopped.)

17 MR. SIEGEL: I am hitting pause at 39 seconds.

18 Q You said when you watched the surveillance video, you saw
19 a firearm?

20 A Yes.

21 Q Are you able to see the firearm in this image?

22 A Yes.

23 Q Can you please circle where you see the firearm.

24 MR. SIEGEL: For the record, the witness has circled
25 a black object in the lower right-hand corner of the frame.

St. Louis - direct - Siegel

79

1 I am hitting play again.

2 (Video played.) (Video stopped.)

3 Q When you described the video before, you said you saw the
4 victim be shot. What is it that you saw that led you to
5 believe that the victim had been shot?

6 A The flash of the muzzle and also you could see like smoke
7 coming after the flash of the muzzle and you could see his
8 reaction after being hit.

9 Q What do you mean you could see his reaction?

10 A You could see him --

11 THE COURT: "Him" being?

12 THE WITNESS: The victim holding his side after
13 being shot.

14 Q The smoke you mentioned, are you able to see that smoke
15 in this image?

16 A Yes.

17 MR. SIEGEL: This is at 56 seconds, by the way, for
18 the record.

19 Q Could you circle where you see that smoke?

20 MR. SIEGEL: For the record, he has circled a gray
21 patch at the bottom center of the image.

22 I am hitting play again.

23 (Video played.) (Video stopped.)

24 MR. SIEGEL: I have stopped it at a minute, 10.

25 Q You mentioned there was a struggle. What happened after

St. Louis - direct - Siegel

80

1 the struggle?

2 A Apparently the perpetrator shoots the victim --

3 MR. STEIN: Judge, objection to "apparently."

4 THE COURT: Testify as to what you know.

5 "Apparently" suggests that you are guessing.

6 THE WITNESS: Okay.

7 THE COURT: We don't want guessing.

8 THE WITNESS: All right.

9 A Basically the perpetrator shoots the victim in the head
10 after an encounter ensues.

11 Q And what does the robber do after that?

12 A He flees the location.

13 Q When you were at the scene of the location, did you see
14 any bloody footprints along the path that the robber took as
15 he fled?

16 A No.

17 Q What did that indicate to you about whether the robber
18 had stepped in any blood?

19 MR. FARRELL: Objection to eliciting an opinion, he
20 is not an expert.

21 MR. SIEGEL: Your Honor, as part of his training, he
22 watches the surveillance video to look for evidence to
23 collect. He watched the surveillance video to see if there
24 were a bloody trail, to see if the robber would have stepped
25 in any blood.

St. Louis - direct - Siegel

81

1 THE COURT: Try a different form. You can get to
2 where you want to go, Mr. Siegel.

3 Q Did you see any evidence at the scene or from the
4 surveillance video that the robber had stepped in any blood?

5 A I saw a whole lot of blood at the location.

6 Q We will get to that in a moment. Did you see any
7 evidence indicating that the robber had stepped in that blood?

8 A No.

9 Q Based on the surveillance video, was there any particular
10 evidence you were going to look for at the scene?

11 A Basically looking for ballistics at the scene.

12 Q What does that mean to look for ballistics?

13 A It's the projectile that flies -- -once you fire the shot
14 of the firearm and the bullet flies out of the muzzle part of
15 the firearm and it basically leaves pieces of evidence at the
16 scene from that fired bullet.

17 Q Did you search for ballistics evidence?

18 A Yes.

19 Q What did you find?

20 A We found one copper jacketing, one lead fragment, and
21 another lead fragment at the scene.

22 Q Just to explain of those terms, what is copper jacketing?

23 A Copper jacketing is the outer covering of a fired bullet
24 once it's fired.

25 Q So let's walk through some of that. I am showing you

St. Louis - direct - Siegel

82

1 Government Exhibit 301-A. What is Government Exhibit 301-A?

2 A 301-A, I see photo markers three and six, photo markers
3 three and six that we placed at the scene.

4 Q Before we get to the photo markers, what area is this?

5 A This is besides the counter, basically where the incident
6 took place.

7 Q So now for the photo markers you mentioned, you mentioned
8 photo markers 3 and 6.

9 A Yes.

10 Q What are those photo markers for as a general matter?

11 A It's so we can take those items, that evidence into
12 custody in NYPD.

13 Q You mentioned earlier when you mark evidence you mark it
14 JSL-1, JSL-2, et cetera?

15 A Yes.

16 Q Where there is a three, does that indicate where JSL-3
17 was found?

18 A Yes.

19 Q And the 6, does that indicate where JSL-6 was found?

20 A Yes.

21 Q You mentioned that there was blood at the scene. At the
22 bottom of this picture, there is a red substance. Is that the
23 blood you are referring to?

24 A Yes.

25 Q And further up on the scene, in the area that the robber

St. Louis - direct - Siegel

83

1 was running out, in this picture, were there any bloody
2 footprints from the robber?

3 A Yes.

4 Q I'm sorry, bloody footprints from the robber?

5 MR. STEIN: Judge, objection to his prompting the
6 witness.

7 THE COURT: You should lay the proper foundation.

8 Q This is a picture you took at the scene?

9 A Yes.

10 Q Is that right?

11 A Yes.

12 THE COURT: The question is did he see any bloody
13 footprints.

14 Q Did you see any bloody footprints from the robber on the
15 video?

16 MR. STEIN: Judge, I object.

17 THE COURT: First whether he saw bloody footprints.

18 Q Did you see any bloody footprints at the scene?

19 A Yes.

20 THE COURT: Ask him where they were.

21 Q Where did you see bloody footprints?

22 A I saw bloody footprints towards the counter, the front
23 part of the counter of the establishment, the Duane Reade.

24 Q Did you see bloody footprints anywhere else in the store?

25 A Yes.

St. Louis - direct - Siegel

84

1 Q Where else did you see bloody footprints?

2 A Behind the rear part of the Duane Reade.

3 Q Did you also watch surveillance video from the rear part
4 of the Duane Reade?

5 A No.

6 Q Did you watch surveillance video to see what the victim
7 did after the encounter with the robber?

8 A Yes.

9 Q What did the victim do after the encounter with the
10 robber?

11 A He ran throughout the whole store in panic, in shock.

12 Q Did you see any bloody footprints left from that?

13 A Yes.

14 Q In the front area towards the exit to the door, where on
15 the previous video the robber had run out, did you see any
16 bloody footprints following that path?

17 A No.

18 Q I am going to show you Government Exhibit 127. What is
19 Government Exhibit 127 showing?

20 A Photo markers 4, 6, and 7.

21 Q And what area of the store is this?

22 A This is toward the side area where the incident occurred.

23 Q And the photo marker 6 that is shown in this picture is
24 that the same as the photo marker 6 in the last photo we
25 looked at?

St. Louis - direct - Siegel

85

1 A Yes.

2 Q So let's start with that photo marker 4. I am going to
3 show you Government Exhibit 300-A. What is Government Exhibit
4 300-A?

5 A That's the copper jacketing.

6 Q And what did you label this piece of evidence?

7 A It has a photo marker 4 with my blue scale with my
8 initials marked JSL-4.

9 Q Can you circle on this picture where you see that copper
10 jacket?

11 MR. SIEGEL: Let the record reflect that he has
12 circled a copper colored item on the right side of the
13 photograph.

14 Q What is the purpose of the blue scale that you referred
15 to?

16 A It's the point that the evidence is going to be taken by
17 us.

18 Q What did you do with JSL-4?

19 A We photographed it. That was a close-up shot, and we
20 packaged it.

21 Q When you packaged it, did you use any tools?

22 A Yes.

23 Q What tool did you use?

24 A Sanitized tweezer.

25 Q Did you wear gloves?

St. Louis - direct - Siegel

86

1 A Yes.

2 Q And what did you package it in?

3 A A plastic bag, a small plastic bag.

4 Q Was that bag sealed?

5 A It was sealed.

6 Q When you collected that evidence, was it ultimately
7 assigned a voucher number and item number?

8 A Yes.

9 Q What is a voucher number?

10 A It's a number given by NYPD basically to give it a number
11 for us so we can recall it and get it if we want to for NYPD
12 purposes.

13 Q What is the difference between a voucher number and an
14 item number?

15 A An item number is the item that's basically put into that
16 voucher, the number is given by NYPD so you know what item it
17 is at that particular time.

18 Q Can multiple items be assigned the same voucher number?

19 A Yes.

20 Q What was the voucher number for JSL-4?

21 A It was six -- I'm sorry, pardon, it was 4000625302.

22 Q What was the item number on that voucher?

23 A That was item No. 1.

24 Q Let's go back to another placard we saw. I am going to
25 show you Government Exhibit 127. Could you circle where you

St. Louis - direct - Siegel

87

1 saw placard 6.

2 MR. SIEGEL: Let the record reflect he has circled
3 the number six on the left-hand side of the image.

4 Q I am going to show you Government Exhibit 301-C. What is
5 Government Exhibit 301-C?

6 A It's a piece of lead fragment embedded in blood.

7 Q Could you circle where in this picture you see that lead
8 fragment?

9 MR. SIEGEL: Let the record reflect he has circled
10 an object in the center of the photograph.

11 I am going to blow it up on the screen, the object
12 he circled.

13 Q What was that object marked?

14 A It was marked 6, but JSL-6.

15 Q What did you do with JSL-6?

16 A Picked up it with a sanitized, freshly packaged tweezer
17 and basically put in a plastic bag.

18 Q Was that plastic bag sealed?

19 A Yes.

20 Q Was that also assigned a voucher number?

21 A Yes.

22 Q What voucher number was that assigned?

23 A It was 4000625302.

24 Q Was that the same voucher number that JSL-4 was given?

25 A Yes.

St. Louis - direct - Siegel

88

1 Q What item number was JSL-6 given?

2 A Item No. 2.

3 Q In addition to JSL-4 and JSL-6, did you find any other
4 bullet fragments at the scene?

5 A Yes.

6 Q Where did you find another bullet fragment?

7 A My partner and I found another bullet fragment behind the
8 counter where the incident took place. It was lodged inside
9 the window sill of that establishment.

10 Q I am going to show you Government Exhibit 302-A. What is
11 Government Exhibit 302-A?

12 A It's showing where the bullet made a path and basically
13 lodged in the ledge of that window behind the counter where
14 the incident took place.

15 Q Are you able to see that bullet fragment in this picture?

16 A Yes.

17 Q Could you circle where you see that bullet fragment in
18 this picture?

19 MR. SIEGEL: Let the record reflect the witness has
20 circled a small silver object under the window sill in the
21 upper left-hand side of the window sill.

22 I am going to blow up that portion that he circled.

23 Q What did you mark this bullet fragment as?

24 A I marked it JSL-9.

25 Q I'd like to show you now Government Exhibit 302-B. What

St. Louis - direct - Siegel

89

1 is 302-B?

2 A 302-B is the piece of lead fragment, basically JSL-9.

3 Q What did you do with JSL-9?

4 A Like I did with JSL-4 and JSL-6, used a freshly packaged
5 tweezers and basically put in a plastic bag.

6 Q Did you seal the plastic bag?

7 A Yes.

8 Q Did this also get a voucher number?

9 A Yes.

10 Q Did it get the same voucher number as the other two
11 items?

12 A Yes.

13 Q What item number did JSL-9 get?

14 A It was item number 30.

15 Q In addition to taking pictures to document the scene,
16 does CSU also make sketches of the crime scene?

17 A Yes.

18 Q Did you make a sketch of this scene?

19 A Yes.

20 Q What does the sketch show?

21 A It shows the layout of the Duane Reade.

22 Q Does it also show where you would have found evidence in
23 the Duane Reade?

24 A Yes.

25 Q I'm showing you Government Exhibit --

St. Louis - direct - Siegel

90

1 MR. SIEGEL: Mr. Villanueva, this should be just for
2 the witness. Government Exhibit 125 just for the witness.

3 Q Do you recognize Government Exhibit 125?

4 A Yes.

5 Q How do you recognize Government Exhibit 125?

6 A It has my name, my shield number, and my run number for
7 this case.

8 Q What is Government Exhibit 125?

9 A It's basically -- it's a top view of the establishment,
10 Duane Reade.

11 Q Is this the sketch that we were referring to a moment
12 ago?

13 A Yes.

14 Q Is this a true and accurate copy of that sketch?

15 A Yes.

16 MR. SIEGEL: Your Honor, I move to admit Government
17 Exhibit 125.

18 THE COURT: Is there any objection?

19 MR. STEIN: Just to note, I understand this is not
20 to scale.

21 THE COURT: That is correct, Detective St. Louis,
22 it's not to scale; correct?

23 THE WITNESS: Correct.

24 MR. SIEGEL: It's not to scale as the exhibit itself
25 says.

St. Louis - direct - Siegel

91

1 THE COURT: And with that, no objection?

2 MR. STEIN: Correct.

3 THE COURT: Received with no objection.

4 (Government's Exhibit 125 received in evidence.)

5 MR. SIEGEL: Just for ease of viewing, I am going to
6 blow up a portion of this exhibit.

7 Q On the sketch, could you please circle where the entrance
8 to the store is shown.

9 MR. SIEGEL: Let the record reflect, the witness has
10 circled the word "entrance."

11 Q Next to the entrance, there is a line of Ws. What are
12 those Ws?

13 A Those are windows.

14 Q Could you indicate on this sketch where the cash
15 registers are?

16 A Can I circle it?

17 Q Please.

18 MR. SIEGEL: Let the record reflect he has circled a
19 portion of a rectangle near where the numbers three and two
20 are on the sketch.

21 Q So I have been referring to numbers on the sketch. What
22 do those numbers represent?

23 A Those numbers represent items that I took at the crime
24 scene.

25 Q So is JSL-4 shown on this sketch?

St. Louis - direct - Siegel

92

1 A Yes.

2 Q You don't have to circle it, but could you describe how
3 we can see where JSL-4 would be?

4 A It's in red and it's where -- with the photographs, it
5 correlate to the photos I took where number 4 was with the
6 photos along with the sketch.

7 Q Let me ask you a different question. There is a number 4
8 shown on this sketch; is that right?

9 A Yes.

10 Q Does that indicate where JSL-4 was found?

11 A Yes.

12 Q Does the number 6 also indicate where JSL-6 was found?

13 A Yes.

14 Q Would the same be true for JSL-9?

15 A Yes.

16 Q In addition to the ballistics evidence that we talked
17 about today, did you find additional evidence at the scene?

18 A Yes, I did.

19 Q What, generally speaking, is some of the other evidence
20 that you found at the scene?

21 A We found a short-sleeved shirt that was outside the Duane
22 Reade. We saw a bag of Skittles, Sweet Heat Skittle, \$20
23 bill, brown left-handed glove, broken eyeglasses with possible
24 blood, left lens from broken eyeglasses, a black Tazio Italy
25 black belt inside the location.

St. Louis - direct - Siegel

93

1 We found a right and a left shoe at the location,
2 blue jeans and briefs and black socks.

3 MR. STEIN: Excuse me, Judge. I don't have a
4 problem with the witness doing it, but it appears that he is
5 reading from a document. If he needs that to refresh his
6 recollection, then he should say so.

7 THE COURT: Mr. Siegel, do you want to take him
8 through it?

9 MR. SIEGEL: Yes.

10 Q Detective, were you just reading what you were saying
11 from a document?

12 A Yes.

13 Q As you sit here today, without that document, do you
14 remember every piece of evidence that you collected?

15 A Yes.

16 Q Even without reading off this, would you remember --

17 A Oh, would I -- no. No. I handle tons of crimes, so I
18 wouldn't have remembered that right now.

19 Q Does seeing this document in front of you refresh your
20 recollection as to the items you did collect?

21 A Yes.

22 Q In fact, the items that are listed at the bottom of the
23 sketch, are those the items that you collected?

24 A Yes.

25 Q And the numbers that are listed next to them, are those

St. Louis - direct - Siegel

94

1 the numbers that you marked them with?

2 A Yes.

3 Q On the diagram, there are red lines shaped like triangles
4 or V's. What are those?

5 A Those are surveillance cameras.

6 Q For the view of the surveillance camera, is the open part
7 of the V or is the closed part of the V the direction that the
8 camera is facing?

9 A The open part of the V is where the camera is facing.

10 Q Are you able to identify which surveillance video the
11 video is the camera that we watched the video from earlier?

12 A It's between --

13 Q And you can circle it on your screen.

14 MR. SIEGEL: Let the record reflect the witness has
15 circled a red triangle. It is the second from the left on the
16 top of the sketch.

17 Q Detective St. Louis, I would like to hand you Government
18 Exhibit 300.

19 MR. SIEGEL: Your Honor, may I approach the witness?

20 THE COURT: You may.

21 Q So, I'm handing you again Government Exhibit 300. Do you
22 recognize that outer packaging for Government Exhibit 300?

23 A No.

24 Q Could you open it up and look on the inside?

25 And do you recognize the contents of Government

St. Louis - direct - Siegel

95

1 Exhibit 300?

2 A Yes.

3 Q How do you recognize those contents?

4 A It has my markings on it and the evidence that I saw at
5 the location, the.

6 Q Can you explain what is the contents of Government
7 Exhibit 300?

8 A It's a copper jacketing, the piece of lead fragment that
9 was on the floor, that was embedded in the blood and another
10 lead piece, a lead fragment that was on the window sill ledge
11 of the establishment.

12 (Continued on following page.)

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St. Louis - direct - Siegel

96

1 BY MR. SIEGEL: (Continuing)

2 Q When you packaged those items, how did you package them?

3 A I packaged them in this clear bag. (Indicating.)

4 MR. SIEGEL: So for the record, the witness is
5 holding up a medium-sized clear bag.

6 Q Did you package each exhibit into that one bag?

7 A Not --

8 Q Each piece of evidence into that one bag?

9 A No. They have their own separate bags.

10 Q So what marking is written on that bag?

11 A It has "JSL 9" for my initials.

12 Q And does that indicate that JSL 9 was inside that bag?

13 A Yes.

14 Q There's also, in addition to the medium bags and --
15 actually, let me take a step back.

16 So that medium bag says, "JSL 9"?

17 A Yes.

18 Q There are two other medium bags. What are those bags
19 marked as?

20 A JSL 4 and JSLK6.

21 Q Are those the bags that you had put JSL 4 and JSLK6 in?

22 A Yes.

23 Q In addition to the medium bags, there are also three
24 larger bags. What are those?

25 A Those are given to the officer at the scene so he can

St. Louis - direct - Siegel

97

1 basically keep those items in one, in their own separate bag
2 to give its own number.

3 Q When you say it's own number, what are you referring to?

4 A Invoice number. The voucher, yes, the invoice number.

5 Q Is that the same vouchering number we talked about
6 before?

7 A Yes.

8 Q The voucher number that you gave before that I don't
9 remember right now, is that number written on each of these
10 large bags?

11 A Yes, it is.

12 Q And when it was packaged, what was the relationship
13 between the large bag and the small bag or the medium bag,
14 excuse me?

15 A It's to, basically send it to the, to the police lab so
16 they can do their testing. So it's packaged in a NYPD serial
17 number.

18 Q Was the medium bag inside the larger bag?

19 A Yes.

20 Q And what about the fragments themselves, are they
21 currently in bags?

22 A Yes, they are.

23 Q Did you put them in those bags?

24 A No.

25 Q Do you know where those bags came from?

St. Louis - direct - Siegel

98

1 A No.

2 Q When you last saw them, were they sealed inside the
3 medium sized bags we referred to?

4 A They were sealed inside these bags because I put them in
5 there, these bags, with my initials on them, JSL 9, JSL 6 and
6 JSL 4.

7 MR. SIEGEL: Your Honor, at this time, I move to
8 admit Government Exhibit 300 subject to connection.

9 MR. STEIN: No objection.

10 THE COURT: Received without objection subject to
11 connection.

12 (So marked.)

13 Q I'd like to collect all this and bring it to the ELMO.
14 Let's not lose anything.

15 (Pause.)

16 (Continued on next page.)

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1 THE COURT: Mr. Siegel, where do you think we are?
2 Are we getting to a landing point?

3 MR. SIEGEL: I was going to go through these items
4 to just show them to the jury and then was going to stop. We
5 can break before I do that show and tell or after.

6 THE COURT: I think that might take more time than
7 we have so let's break.

8 MR. SIEGEL: We can take a break now.

9 THE COURT: That works for me.

10 All right. Ladies and gentlemen, we are going to
11 take a break now. Normally we would continue through and have
12 a logical break. Unfortunately, there is a business meeting
13 of the judges at this hour so I have to break to go there.
14 Otherwise, my ordinary practice would be to continue until we
15 came to a logical conclusion. This is not a logical
16 conclusion. What Mr. Siegel was about to do would have been.

17 Anyway, it does bring us to the luncheon break and,
18 again, because these instructions are so important, you are
19 going to hear them repeatedly.

20 Ones that apply to little recesses that we take
21 apply here too so you are going to continue to keep an open
22 mind. You are not going to discuss the case amongst
23 yourselves or with anyone else. Now you're also going to be
24 outside the presence of this area of the courtroom. You are
25 going to be outside having lunch or going to the cafeteria to

100

1 have lunch and there's more time than the short little breaks
2 that we take so that there are more concerns and there are
3 more very important rules that apply.

4 So you are not to use the luncheon period to conduct
5 any investigations about anything that remotely touches on
6 this case, either directly or remotely, any of the names, the
7 personalities, the issues, and that means doing it
8 electronically, I guess as we've all become accustomed to, or
9 the old fashioned way of looking it up in some print medium.

10 Also, during this luncheon break and, again, for the
11 overnight recess, you are not to use the time to read any
12 accounts of the case that appear in the media and there's a
13 big footnote here. Back when I was young, media meant
14 newspapers, radio and TV. Today, media means an awful lot of
15 things. People get news in an awful lot of ways. So you
16 never know when news will pop up on Facebook or Instagram. So
17 should any of those things happen, you are directed to totally
18 disregard it, close them out of your eyes, mind and ears, and
19 just shut them out. So there's to be no, not only no
20 investigation, but shutting out any media accounts that might
21 occur.

22 This was referenced in Mr. LaMonaco's instructions
23 to you and I want to repeat them. While you are a juror on
24 this case, you are on radio silence. You're not to
25 communicate the fact that you are a juror, that you're coming

1 to Brooklyn or that there's anything that relates to this case
2 directly or indirectly. That's all strictly prohibited.
3 There will be no communications of any sort, electronic or
4 otherwise, about anything that goes on that relates to this
5 trial or the fact that you're even coming to the courthouse in
6 Brooklyn.

7 So that brings us to lunch which is the good news.
8 The bad news is that nobody is buying you lunch. There is a
9 cafeteria here if you wish to avail yourself. I don't know
10 what the weather is. I know rain is supposedly coming at some
11 point but there are luncheon places around the courthouse. So
12 we're going to break for that lunch.

13 I'm going to ask you to come back to the Central
14 Jury Room. You can't come up to the courtroom or the regular
15 jury room unaccompanied. Report back to the Central Jury Room
16 at around 2:15 and we'll start at 2:15, as close to 2:30 as we
17 can.

18 We all appreciate your patience, your cooperation,
19 your attendance and your sacrifice. I bid you a good lunch
20 and we'll see you between 2:15 and 2:30.

21 (Jury exits.)

22 THE COURT: All right. Detective St. Louis, you are
23 excused. Have a good lunch.

24 (Witness steps down.)

25 THE COURT: Counsel, to the extent the rules apply,

102

1 to the extent that you want to leave anything in the courtroom
2 during the break, feel free. William is going to lock it up.
3 To the extent that you think you might need something, then
4 take it with you so that way, you'll have access to it during
5 the luncheon period.

6 We'll see you between 2:15 and 2:30.

7 MR. SELDEN: Thank you, Your Honor.

8 THE COURT: Enjoy your lunch.

9 MR. SELDEN: Thank you.

10 (Luncheon recess.)

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1 AFTERNOON SESSION

2 (In open court; outside the presence of the jury.)

3 THE CLERK: Court is back in session.

4 Counsel for both sides are present including
5 defendant.

6 THE COURT: Counsel, welcome back all.

7 We have received a brief on behalf of Juror
8 Number Seven from some doctor of some sort indicating this
9 grave condition that she has that she's liable to panic in the
10 midst of proceedings here. Counsel was willing to give me
11 sage counsel in the morning. Do they have sage counsel in the
12 afternoon?

13 MR. FARRELL: We're willing to let her go, Judge.
14 That's our sage counsel for the afternoon.

15 THE COURT: I think it's a losing battle, gentlemen.
16 Defense agree?

17 MR. SELDEN: Your Honor, on behalf of the
18 government, we agree.

19 THE COURT: I heard a voice from somewhere. The
20 government agrees?

21 MR. SELDEN: Yes.

22 THE COURT: Government agrees. Defense agrees.
23 Judge agrees. Let's bring in Juror Number Seven.

24 (Juror Number Seven enters.)

25 THE COURT: Have a seat, Juror Number Seven.

1 We received a note from your doctor. I won't place
2 on the record the conditions but we take notice of it. The
3 only comment I have is that you sat through what's known as
4 voir dire jury selection yesterday and you won't know how long
5 it took and the decisions that the lawyers on both sides have
6 to make are made with the understanding of who the pool is. I
7 know, and the lawyers have confirmed for me, Judge Orenstein's
8 practice would have given you enormous opportunity, even
9 privately expressed at the sidebar, the health issues that you
10 have, but you didn't and that, frankly, jeopardizes all that
11 we do here, we hope, because no one ever knows, which is why
12 we select alternates in the first place, what might arise
13 after jury selection occurs that prevents a juror from
14 completing service. When the problem arises before jury
15 service begins, then we've effectively lost one of our safety
16 valves and that is very regretful.

17 I am certainly not going to keep you as a member of
18 the jury in the teeth of the note diagnosis, prognosis, call
19 it what you will, that your doctor has provided, but I would
20 urge you in situations where people are making decisions on
21 the basis of the information that you provide them, if you're
22 incapable of doing something, be a little more forthright the
23 next time so that people don't make decisions based on
24 information that's not accurate.

25 MR. STEIN: Judge, I believe actually this came up

1 during voir dire.

2 THE JUROR: Yes. If I could speak, I said it
3 yesterday. He asked if anyone has vision impairments and I
4 had raised my hand and said that I get really bad migraines
5 that cause aura, numbness, tingling-ness that are caused from
6 my upper back and neck spasms. I go to physical therapy twice
7 a week for it. I didn't realize that it would affect me
8 because they haven't been often, but due to the stress it took
9 driving three hours this morning, I was just -- I was so tense
10 and my head was killing, the lights in here.

11 I don't want to be not fair to the defendant, the
12 government. I just -- I said something this morning. I know
13 I understand, obviously, it's my duty. I want to serve my
14 rights. I want to sit here but I just needed to express that
15 today before it got any further and I'm so sorry.

16 THE COURT: Well, and we certainly, all of us, are
17 sympathetic to your issues. I think migraines and the other
18 issues or conditions described in the doctor's note are more
19 concerning. Migraines can be painful, certainly, but some of
20 the other conditions that were described there can be
21 disruptive and painful.

22 Obviously, we're concerned from the viewpoint of how
23 the case gets handled, but we're all equally, none of us,
24 would want to put you personally in a situation that
25 compromises your health and that's, to me, that's what that

1 doctor's note says and none of us here, we analogized it to
2 military service but we don't expect jurors to give blood, you
3 know, on the battlefield.

4 THE JUROR: Thank you.

5 THE COURT: So we regret that it ends this way but
6 we certainly, all of us, wish you to find some sort of, you go
7 with our good wishes and find, to the extent your condition
8 can be better managed, we all hope that that's ultimately
9 where this story ends, where there's some better management
10 for you so you don't face the kind of issues that you faced
11 today.

12 So we regret that and we give you good wishes and
13 you will be excused for the balance of the term.

14 THE JUROR: Thank you. Thank you.

15 THE COURT: You're welcome.

16 (Juror Number Seven excused.)

17 MR. STEIN: Judge, something also I want to alert to
18 your attention. I don't know if you want to wait until
19 William comes back.

20 THE COURT: No. If it doesn't involve William doing
21 something --

22 MR. STEIN: It might concern him indirectly because
23 I don't know what communication he has with the jurors.

24 THE COURT: He always isolates the jurors. So
25 what's going on between William and Juror Number Seven --

1 MR. STEIN: Nothing between the two of them. I'm
2 talking about the jury in general.

3 So I told the government about this during the lunch
4 break. So they're used to be an area in the Lunchroom where
5 there's a sign that says "Jurors Dining Area" or something.
6 For whatever reason, it's closed. It's sealed off. So there
7 were a number of jurors, not surprisingly, who were in the
8 cafeteria as I saw members of the government were and one of
9 my colleagues who knew I was here, in a somewhat loud sort of
10 jovial tone, came over to me and started asking me about the
11 case but they were general questions, not something specific.
12 I told him that there were jurors around so he had to stop.

13 So I don't know what you can do about this because
14 unless you want to sign off on my voucher to go to a nice
15 restaurant in Brooklyn Heights, I'm not sure what to do about
16 it, Judge.

17 THE COURT: I'll have William inquire of the
18 District Executive.

19 MR. STEIN: It was awkward and somewhat
20 uncomfortable, frankly.

21 THE COURT: What Mr. Stein is saying, William, is
22 there used to be a section of the luncheon area that was
23 reserved for jurors and for whatever reason, that section has
24 been closed off and there was an intermingling of or --

25 I suppose there were jurors from some other cases as

1 well, Mr. Stein?

2 MR. STEIN: I assume so. That's certainly possible,
3 Judge. I was only thinking about the jurors in our case.

4 THE COURT: So the inquiry would be, and maybe the
5 District Executive can make inquiry here as to what can be
6 done to try to be more protective of jurors who are eating
7 lunch to separate them from counsel and to give counsel, as
8 Mr. Stein was noting, that counsel who jovially met him would
9 not be aware, that there were jurors present because the area
10 that used to be reserved for jurors with a sign is no longer
11 so marked.

12 THE CLERK: Okay.

13 THE COURT: So we'll see what we can do between now
14 and tomorrow's lunch. It's a good point, Mr. Stein, in any
15 event.

16 THE CLERK: I will inquire.

17 THE COURT: That's really housekeeping.

18 MR. STEIN: Literally.

19 THE COURT: Literally. In any event, we are
20 otherwise ready to go, I assume.

21 MR. SELDEN: On behalf of the government, yes,
22 Your Honor.

23 THE COURT: And Detective St. Louis can be back.

24 MR. SELDEN: Would you like him to be seated,
25 Your Honor?

1 THE COURT: Yes. He can be seated before the jury
2 comes in.

3 (Witness resumes the stand.)

4 THE CLERK: Just for the record, Counsel, Alternate
5 Juror Number One will take the place of Juror Number Seven.

6 (Jury enters.)

7 THE COURT: Be seated, please.

8 Counsel will stipulate the jury is present and
9 properly seated.

10 MR. SELDEN: On behalf of the government, yes,
11 Your Honor.

12 MR. STEIN: Yes, Your Honor.

13 THE COURT: Thank you, Counsel.

14 Ladies and gentlemen, welcome back. We had a
15 greater length of time required to deal with certain
16 housekeeping matters.

17 In Mr. LaMonaco's preliminary advice to you about
18 how things would unfold, we did make reference to alternate
19 jurors and there are times because of urgent situations,
20 though extremely rare, we do have to at times replace a
21 regular juror with an alternate juror. Unfortunately, we've
22 had that experience in this case. We believe everything will
23 work out well to the excused juror but we were required to
24 replace Juror Number Seven with former Alternate Juror Number
25 One who is now Juror Number Seven.

St. Louis - direct - Siegel

110

1 Now, when we did break for lunch, you remember
2 Detective St. Louis was on the witness stand. He was still
3 undergoing direct examination by Mr. Siegel and Mr. Siegel may
4 continue that examination now.

5 MR. SIEGEL: Thank you, Your Honor.

6 Mr. Villanueva, if I can have the ELMO, please.

7 DIRECT EXAMINATION (Continued)

8 BY MR. SIEGEL:

9 Q So Detective St. Louis, I want to go through some of the
10 items that you identified on the stand now on the projector.
11 So I wanted to just start by sorting them out as if I was
12 standing up in front of you.

13 What is in this envelope currently marked as 10?
14 Have you seen this plastic envelope before?

15 A No.

16 Q I'd like to take the item out. Do you recognize this as
17 one of the items you recovered?

18 A Yes.

19 Q Which was this?

20 A JSL 9.

21 Q We also talked about the bags that were in that envelope.
22 So I'm going to start with the, what I was referring to as a
23 medium sized bag. This signature that's running by the top at
24 the edge of the bag, do you recognize that signature?

25 A Yes.

St. Louis - direct - Siegel

111

1 Q What signature is that?

2 A That's mine.

3 Q And on the back of that medium sized bag, is that your
4 marking of "JSL 9"?

5 A Correct.

6 Q And when you packaged this bag, was JSL 9 inside of this
7 particular bag?

8 A Yes.

9 Q There is also this larger bag that says on it, "JSL 9."
10 What was inside of this larger bag?

11 A The plastic bag that was marked JSL 9 with the piece of
12 lead fragment.

13 Q So I'll just hold it up. The piece of lead was in the
14 sealed bag, the sealed medium bag, and the sealed medium bag
15 was in the larger bag?

16 A Correct.

17 Q And we talked about this before but I want to make sure
18 that the jury can see it, the invoice number that's on this
19 yellow sticker.

20 A Yes.

21 Q That same invoice number that we talked about before is
22 the voucher number?

23 A Correct.

24 Q I'm now showing you what's in the plastic baggie marked
25 as, it has a "9" on it. Have you seen this plastic baggie

St. Louis - direct - Siegel

112

1 before?

2 A No.

3 Q And that item inside the plastic baggie, is that an item
4 you collected?

5 A Yes.

6 Q Which item is this?

7 A That is JSL 6, marker 6.

8 Q When you collected JSL 6, did it look like this?

9 A No.

10 Q How was it different?

11 A It was covered in blood. Now it's not covered in blood.

12 Q Did you clean the blood off of it?

13 A No.

14 Q I'll put JSL 6 back inside the plastic bag that it was
15 inside of.

16 There is also a sealed envelope containing one of
17 those medium sized bags that's also marked with a "9." Do you
18 recognize the medium sized bag that is inside this sealed
19 envelope?

20 A Yes.

21 Q What do you recognize it as?

22 A That's JSL, JSL 6, but also the identifying mark is the
23 blood residue that was on the piece of led fragment that's
24 inside that plastic bag.

25 Q When you refer to the blood residue, do you mean that red

St. Louis - direct - Siegel

113

1 discoloration in the upper left-hand corner of this?

2 A Correct.

3 Q And there's also a larger plastic bag that's marked with
4 JSL 6. Was the relationship for JSL 6 the same that we
5 discussed for JSL 9, the item in the medium bag, and this
6 medium bag in this larger bag?

7 A Correct.

8 Q I'm going to zoom in on the yellow sticker. Is the
9 listed invoice number there the same as the voucher number we
10 discussed before?

11 A Yes.

12 Q Finally, I'm showing you what's in a small plastic baggie
13 with a faded "8" on it. And I'm not going to take it out, but
14 do you recognize what's inside that small plastic baggie?

15 A Yes.

16 Q What is that?

17 A That's the copper jacketing which was from the marker 4
18 which I marked as JSL 4.

19 Q Was it in two pieces or one piece when you collected it?

20 A It was in one piece.

21 Q Do you know why it is now in two pieces?

22 A I guess through transportation of it going to the
23 precinct of concern --

24 MR. STEIN: Judge, I move to strike.

25 THE COURT: Yes. The answer is stricken.

St. Louis - direct - Siegel

114

1 Q Instead of you guessing, do you know what --

2 A No. No. I don't know.

3 Q And I'm showing you a medium sized bag that has "JSL 4"
4 written on the back and there's also a signature by the tape.
5 Do you recognize that signature?

6 A Yes.

7 Q What signature is that?

8 A That's my signature.

9 Q And when you packaged JSL 4, was it placed inside this
10 medium sized bag?

11 A Yes.

12 Q And was it sealed at the time?

13 A Yes.

14 Q And I'm now showing you, again, a larger sized bag that
15 is marked as JSL 4. What is this larger bag marked JSL 4?

16 A That's where I put JSL 4, the copper jacketing into that
17 smaller bag, into that big bag.

18 Q The similar way that you described for JSL 6 and JSL 9?

19 A Correct.

20 Q I just want to show the invoice number on here and just
21 read it for the record. It's 4000625302.

22 Is that the same number that we talked about before
23 as the voucher number?

24 A Yes.

25 Q All right. I'm going to set that aside as well.

St. Louis - direct - Siegel

115

1 MR. SIEGEL: William, if we could go back to the
2 computer, please, and this is in evidence.

3 Q So I just want to ask you a question about the video that
4 we looked at before and I'm going to start it at about
5 36 seconds.

6 You described earlier when we talked about this, you
7 described two shots, is that right?

8 A Correct.

9 Q And I just want to play the video.

10 (Video played.) (Video stopped.)

11 Q I'm stopping at 1 minute and 10 seconds.

12 So I just want to be clear, are you able to see two
13 shots on this video?

14 A No.

15 Q How many shots are you able to see on this video?

16 A One.

17 Q So the second shot, what is that you were referring to?

18 A The second shot was when I got to the scene and I
19 basically, and I saw the lead, the piece of lead fragment on
20 that floor with the blood covered on it, so that's how I know,
21 basically, that's how he shot the second shot.

22 (Continued on next page.)

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St. Louis - direct - Siegel

116

1 (Continuing)

2 Q I also just want to go back for a moment to Government
3 Exhibit 125 which is the sketch we talked about before.

4 (Exhibit published.)

5 Q And I asked you if this was a true and accurate copy of
6 the sketch, but I didn't ask, other than the fact that it's
7 not to scale, is this a fair representation of what the scene
8 looked like on the night that you were there?

9 A Yes.

10 Q I also asked about 4, 6 and 9, or JSL-4, 6 and 9, and I
11 just want to blow it up.

12 Could you just circle on this where 4, 6 and 9 were
13 found?

14 MR. SIEGEL: So for the record he has circled red
15 numbers 4, 6 and 9.

16 Q And I'd also just like to correct on this. I think when
17 I described -- when you circled the surveillance video before
18 I described it as the second from the left and is it, in fact,
19 the second from the right that I should have said?

20 A Yes.

21 Q Let me look at that.

22 The surveillance video that we watched the video
23 from, could you circle that on this sketch.

24 So as I said, before I indicated that was the second
25 from the left. I think I should have said that that is the

St. Louis - cross - Farrell

117

1 second camera from the right on the top on this sketch.

2 MR. SIEGEL: Just a moment, Your Honor?

3 (Pause in the proceedings.)

4 MR. SIEGEL: Your Honor, I have no further questions
5 and I would just ask permission for a moment to clean up the
6 little mess I've made by the ELMO.

7 THE COURT: We appreciate your tidiness.

8 MR. STEIN: Housekeeping, Judge.

9 THE COURT: Who is handling cross?

10 MR. FARRELL: I've got it, Judge.

11 THE COURT: Mr. Farrell.

12 CROSS EXAMINATION

13 BY MR. FARRELL:

14 Q Good afternoon, Detective St. Louis.

15 A Good afternoon.

16 Q My name is Gary Farrell. You and I have never met or
17 discussed this case; correct?

18 A Correct.

19 Q Your unit, the Crime Scene Unit of the New York City
20 Police Department, how long have you been in it again?

21 A Seven years.

22 Q And you would agree with me, that's a city-wide unit. In
23 other words, you cover all five boroughs; correct?

24 A Correct.

25 Q You are based in the Bronx, though. Bronx, New York;

St. Louis - cross - Farrell

118

1 right?

2 A No. Queens.

3 Q Queens. Weren't you in the Bronx for a long time?

4 A No.

5 Q It's always been Queens?

6 A It's Queens and Brooklyn.

7 Q Okay. So your unit was based in Queens back when this
8 incident happened?

9 A Correct.

10 Q And I believe you asked -- you answered the question
11 about the types of cases you respond to and it's not every
12 crime that happens on any particular day; right? It's only
13 certain types of crimes; right?

14 A Certain types of crimes; correct.

15 Q The most serious crimes, like homicide, rape, arson,
16 shooting; would that be fair to say?

17 A Correct.

18 Q And your main duties and responsibilities are about
19 documenting and collecting evidence; correct?

20 A Correct.

21 Q And there is another unit that does this to less serious
22 crimes that I think you were asked about by Mr. Siegel, and
23 that's the NYPD's Evidence Collection Unit; correct?

24 A Correct.

25 Q They might respond to cases involving burglary or the

St. Louis - cross - Farrell

119

1 possession of a gun, and try to obtain evidence from -- in
2 those type of cases; correct?

3 A Correct.

4 Q They received similar training to you in terms of how to
5 document and recover and package evidence; correct?

6 A Correct.

7 Q You would agree with me that officers in the field don't
8 have that type of training, the training you have and the
9 Evidence Collection Unit officers unit has; is that fair to
10 say?

11 A Fair to say.

12 MR. SIEGEL: Objection, Your Honor, to that. I
13 don't know whether he knows what other officers have training
14 on.

15 THE COURT: Do you have an understanding of what
16 officers in NYPD have with respect to the collection of
17 evidence and documenting evidence if they are not a member
18 either of the CSU or the ECT?

19 THE WITNESS: Yes.

20 THE COURT: He may answer.

21 Q Detective, you described on direct some of the tools you
22 have that are specific to people in your unit, Crime Scene
23 Unit. You describe a suit kind of like a space suit; correct?

24 A Correct.

25 Q And you have certain tools that aid you in preserving

St. Louis - cross - Farrell

120

1 evidence and trying to avoid contamination; correct?

2 A Correct.

3 Q And those specific tools aren't carried by your typical
4 officer in the field. You'd agree with me; correct?

5 MR. SIEGEL: Your Honor, again, I don't know that he
6 knows.

7 THE COURT: He just told us he knows what officers
8 generally in the field carry. He is 16 years on the force,
9 seven years in CSU.

10 Q I think you can answer, Detective.

11 A Yes.

12 Q Now, getting back to this case again.

13 Were you at the base in Queens when you got the call
14 or were you out on a job somewhere?

15 A I was actually -- I came in early in the morning and what
16 happens is we have a satellite. God forbid something was to
17 happen in Manhattan, they have a satellite in Brooklyn where
18 we could respond quickly, God forbid a 9-11 was to occur, so
19 we can respond to that catastrophe.

20 So I was at -- actually, I was in Brooklyn at the
21 Brooklyn satellite in the 84 Precinct.

22 Q Okay. And about what time did you arrive to the Duane
23 Reade that's the subject of your testimony?

24 A 6:30 in the morning.

25 Q And did you have a partner that accompanied you to that

St. Louis - cross - Farrell

121

1 Duane Reade?

2 A Yes.

3 Q What was his name or her name?

4 A Jay Eddy, J-A-Y, E-D-D-Y.

5 Q And you say that upon entering the Duane Reade, one of
6 the first things you did was confer with one of the detectives
7 who was on the site, on the scene; is that right?

8 A Correct.

9 Q As you sit here today, I know it was a long time ago, do
10 you know who that detective was?

11 A I can't recall.

12 Q And you also said, I believe, correct me if I'm wrong,
13 one of the first things you did was watch the video, the video
14 that we've now seen a few times. We might even see one more
15 time; is that right?

16 A We all did, yes.

17 Q Where inside the store did you watch that video? Do you
18 recall?

19 A I can't recall.

20 Q Do you recall that it was the store manager that was
21 cooperative and brought you and the detective who was on the
22 scene trying to find out what happened into his office where
23 you could watch the case? Does that ring a bell?

24 A Sort of.

25 Q And how many times did you watch it? We've watched it

St. Louis - cross - Farrell

122

1 probably three times now in court.

2 How many times did you watch it that day before you
3 went out and began to do your job of documenting and
4 collecting evidence?

5 A Approximately eight, nine times.

6 MR. FARRELL: And I'm going to make it one last time
7 in court, please, with the assistance of Mr. Siegel and with
8 my colleague, Mr. Burns.

9 This will be Government's Exhibit 402-C.

10 (Video played for jury.)

11 MR. FARRELL: Could we stop this there, Mr. Siegel.
12 Thanks.

13 BY MR. FARRELL:

14 Q Detective, would you agree with me that the person who
15 was originally holding was what turned out to be Skittles, was
16 one of the things you collected; correct?

17 A Yes.

18 Q And that he held them in his right hand and that he held
19 them for a few seconds at least; right? He was kind of
20 shaking them?

21 A Shaking them; correct.

22 Q And would you also agree with me that the guy pulled out
23 a gun with his right hand and pointed it at the man working
24 behind the counter.

25 A I can't tell from -- I mean, I can't tell --

St. Louis - cross - Farrell

123

1 Q If you want to go back.

2 A Could we go back, please? Thank you.

3 Q Sure.

4 (Video played for jury.)

5 Q Did you see that?

6 A Yes.

7 Q The hand he was reaching, would you agree it was his
8 right hand?

9 A Yes.

10 Q Okay.

11 MR. FARRELL: Now we can play it, Mr. Siegel. Thank
12 you.

13 (Video played for jury.)

14 MR. FARRELL: Stop it, please.

15 Q And you'd agree with me, and I think this has been asked
16 by Mr. Siegel, that would be the point of what we've been
17 calling the first shot; correct, Detective St. Louis?

18 A Yes.

19 Q Okay. Thank you.

20 MR. FARRELL: Continues, please, Mr. Siegel.

21 (Video played for jury.)

22 MR. FARRELL: Stop it, please.

23 Q At that point, Detective, do you agree that the person
24 that was shot charged or certainly went toward and, in fact,
25 touched the person that had shot him? Would you agree with

St. Louis - cross - Farrell

124

1 that?

2 Would you like to see it again?

3 A I'd like to see it again, please.

4 Q Okay.

5 (Video played for jury.)

6 Q Having seen it again, Detective, would you agree that it
7 appeared that the person who was shot touched the person who
8 shot him with his left hand as he moved toward him?

9 A I can't tell by that.

10 Q Would you agree that there was -- you've described as the
11 second shot occurred off camera; correct?

12 A Correct.

13 Q Well, in the course of your investigation at the scene,
14 Detective, did you determine that the victim was shot in the
15 hand and, in fact, part of his thumb was shot off? You found
16 that out when you were there; right?

17 A Yes.

18 Q And you also found out...

19 (Pause in the proceedings.)

20 Q And you know it was his left hand; right? That the
21 victim, it was his left thumb that was injured by the first
22 gunshot; correct? In fact, he lost a part of it.

23 A That, I can't recall.

24 Q And well, Detective, you're agreeing that one of his
25 thumbs was shot; correct? Right?

St. Louis - cross - Farrell

125

1 A Yes.

2 Q And would you agree that it was possible that blood from
3 his finger, as he moved toward the perpetrator, could have got
4 on the perpetrator's clothes? You would agree with that;
5 right?

6 MR. SIEGEL: Your Honor, that calls for speculation.

7 THE COURT: Yes, also. Sustained.

8 Q Well, Detective, tell us what the term blood splatter
9 means.

10 A Well, I'm not an expert because we have that in our crime
11 scene personnel. We do have a blood spatter expert and I
12 can't state that I'm --

13 Q Well, in your many years of responding to serious crimes
14 like murders, you've seen evidence of blood splatter before;
15 right?

16 MR. SIEGEL: Your Honor, he just said that he --

17 THE COURT: No, he can answer that question as a
18 difference between something about blood splatter, as opposed
19 to whether he has ever seen blood splatter that he believes
20 other people investigate.

21 Q I think you can answer that question, Detective. Do you
22 understand?

23 A Would you repeat that question again, please.

24 Q Sure.

25 In your many years of responding to scenes, some

St. Louis - cross - Farrell

126

1 very heinous homicide, you've seen evidence of blood splatter
2 yourself; right?

3 A Yes.

4 Q And there was a lot of blood in this Duane Reade;
5 correct?

6 A Yes.

7 Q And there was -- well, there was blood concentrated, in
8 fact, where you took out JL-6, one of the bullet fragments,
9 was in a, be fair to say, a pool of blood; correct?

10 A Yes.

11 Q And you know that just as a, without being an expert,
12 that when a person is shot, blood can project back toward the
13 shooter. You know that; right?

14 MR. SIEGEL: Your Honor, objection.

15 THE COURT: Sustained.

16 MR. FARRELL: Okay. I'd ask with help of
17 Mr. Siegel, that Government's 301-C be shown to the witness.

18 (Exhibit published.)

19 BY MR. FARRELL:

20 Q You remember Mr. Siegel showing you this, Detective;
21 right.

22 A Yes.

23 Q And that's just what I was asking you about; right?
24 That's showing where you recovered -- just so I'm sure, was it
25 a bullet fragment in this J -- that you identified as JS-6?

St. Louis - cross - Farrell

127

1 A That's a piece --

2 Q Piece of lead fragment?

3 A Lead fragment; correct.

4 Q And would you also agree with me that this blood that's
5 depicted in this picture is, was -- was close to the counter
6 where the incident occurred; correct? The one we just saw in
7 the video?

8 A Yes.

9 Q And would you also agree with me that present in that
10 photograph is the image of a footprint in that blood? Would
11 you agree with that?

12 A I can't tell from that.

13 Q Well, Detective, you wrote a lengthy report, a summary of
14 what occurred in this case; correct?

15 A Correct.

16 Q Have you read it recently or do you have it with you
17 today?

18 A I have it with me today but not on me right now.

19 MR. FARRELL: Mr. Villanueva, if I was to put this
20 on this and show it only to the witness, could I do that?

21 THE COURTROOM DEPUTY: Yes.

22 (Pause in the proceedings.)

23 BY MR. FARRELL:

24 Q Can you see it, Detective?

25 A Yes.

St. Louis - cross - Farrell

128

1 Q Do you see where I have asterisks? To save some time, I
2 want to cut down to that.

3 A I see it.

4 THE COURT: Identify the exhibit for the record.

5 MR. FARRELL: Yes, Judge. It's under this witness's
6 3500 material. Doesn't have a -- I believe it's JSL 3500
7 JSL-12, which is a multidocument -- which is a multidocument.

8 THE COURT: But it is 12.

9 MR. FARRELL: Multipage report, yes. Thank you.

10 Q When you've completed reading your report -- by the way,
11 this is your report that you wrote; right?

12 A Yes.

13 Q And you wrote it pretty soon after the events that you
14 observed when things were fresh in your head; right?

15 A Correct.

16 Q And you always try to be accurate when you prepare an
17 official police report; correct?

18 A Correct.

19 Q And that's what you tried to do in this case; right?

20 A Yes.

21 Q And now that your recollection is refreshed to the point
22 that you can admit to me that, in fact, that was a footprint
23 what we just saw?

24 A Yes.

25 Q And Detective, with respect to that particular footprint,

St. Louis - cross - Farrell

129

1 the shoes s of the victim were part of the things you
2 recovered. In fact, you noted them as JS-11 -- JSL-11 and
3 JSL-12; correct?

4 A Yes.

5 Q As you sit here today, do you recall if there was blood
6 on the bottom of either of those shoes?

7 A I can't recall.

8 MR. FARRELL: I'm going to show you what's in
9 evidence as GX-125.

10 Q I think -- can you see it as your map, Detective?

11 (Exhibit published.)

12 A Yes.

13 Q Okay.

14 A Could you move it up a little bit, I can't, okay. There
15 you go.

16 Q Okay.

17 A Thank you. Right there is good.

18 Q Okay. That's better. Okay.

19 Now, you noted that the shoes were recovered as
20 JS-11 and JSL-11, JSL-12 as brown right Clarks shoe and a
21 brown left Clarks shoe; correct?

22 A Correct.

23 Q Could you show me where that is on the map, on your
24 map? I see two, I see seven, I see six. I don't know that I
25 see those shoes, 11 and 12.

St. Louis - cross - Farrell

130

1 A No, I don't see it.

2 Q By the way, did you respond to the hospital at all where
3 they took the gentleman who was shot?

4 A No.

5 Q Yet you -- from JSL-10 is his belt; correct? You note
6 that?

7 A Yes.

8 Q 11 and 12 are the shoes; right?

9 A Yes.

10 Q The belt you actually noted possible blood; correct?

11 A Correct.

12 Q The shoes you did not note possible blood; correct?

13 A I didn't note that, no.

14 Q Blue jeans you did note possible blood, correct, for
15 JSL-13?

16 A Correct.

17 Q Okay. But JSL-14, MacroMan briefs with possible blood;
18 correct?

19 A Correct.

20 Q And then JSL-15 and 16 are two socks; correct?

21 A Correct.

22 Q So if you didn't go to the hospital, how did you get this
23 guy's clothes to make notes about it?

24 A I can't recall. I can't recall.

25 Q Another officer swore in the same seat that you're in

St. Louis - cross - Farrell

131

1 that the victim went to the hospital with all his clothes on
2 just earlier today.

3 MR. SIEGEL: Objection, Your Honor.

4 THE COURT: Sustained.

5 Q Is there anything you think that might refresh your
6 recollection as to how you made all these observations about
7 clothing that you don't note on your diagram?

8 A I probably -- I probably... I have -- I'm pretty sure I
9 have it in one of my documentation, in one of my sheets where
10 I got this sneakers, not sneakers, the Clarks shoes from. I'm
11 pretty sure I have that.

12 Q Okay. But as you sit here today, you can't really recall
13 where that --

14 A I can't recall where that was, no.

15 Q And do you recall making a conclusion that --

16 MR. FARRELL: Go back to the footprint for a minute.

17 Q -- that the footprint was made by the victim's shoes?

18 Did you see that this your report before when I showed you?

19 A Yes, I did.

20 Q Well, how did you have any basis at all to do that,
21 Detective? Just like you're not an expert in blood splatter,
22 you're not an expert in footprint reading, are you?

23 A No, I'm not, but there was another video that we saw from
24 a different angle that showed -- that showed them wrestling
25 and you see him, you see the perpetrator and the defendant

St. Louis - cross - Farrell

132

1 fighting and they're slipping.

2 Q You saw a video --

3 A I saw, yes.

4 Q -- you saw the perpetrator and the --

5 A Victim.

6 Q -- victim struggling with each other?

7 A Correct.

8 Q You can barely see both of them and they're standing in
9 the pool of blood.

10 A I just recall seeing the victim in the pool of blood
11 like, slipping.

12 Q Okay. But as you sit here today, you're not sure and you
13 certainly didn't note on your report or your map that those
14 shoes had any blood on them; correct?

15 A Not that I know of.

16 Q JSL-2 was the package of Skittles that we saw; correct?

17 A Correct.

18 Q And you noted -- you took them as evidence that could be
19 probative in this case; correct?

20 A Yes.

21 Q Why did you do that? Why take the Skittles because we
22 all saw the guy was wearing a glove, Detective, when he was
23 holding them?

24 A Well, according to the case detective, his supervisor, we
25 conferred with each other. They basically said we should take

St. Louis - cross - Farrell

133

1 that just in case. It was seen in the video that he was
2 handling that Skittles bag.

3 Q And, in fact, Detective, didn't you note in your own
4 report that the bag of Skittles candy was sent for DNA because
5 the suspect was wearing gloves at the time committing a crime
6 and might have handled the gloves before committing the crime
7 and the suspect might have transferred DNA from handling
8 gloves in the past? Wasn't that your own -- the way you put
9 it in your own report?

10 A Correct.

11 Q And the \$20 bill that the person put on the counter as if
12 he was going to pay for the Skittles, that was also -- that's
13 JSL-3; right?

14 A I can't recall.

15 Q You want to look at your map where it says JSL-3, \$20
16 bill?

17 A Okay. Now I see it. It's on the cash register.

18 Q Right.

19 You took that and you sent that for DNA testing,
20 too; right?

21 A Correct.

22 Q On the same theory that the DNA could have been
23 transferred to the 20, even because of the glove; right?

24 A Correct.

25 Q And the ballistic evidence, JSL-4, 5 and 6, that was sent

St. Louis - cross - Farrell

134

1 for testing for the appropriate unit, the ballistics unit;
2 right?

3 A You said 4, 5 and 6?

4 Q JSL-4 is copper jacket -- you're right. I'm sorry.
5 JSL-4, JSL-6, JSL-9 were sent to ballistics;
6 correct?

7 A Correct.

8 Q By the way, JSL-flag -- I'm sorry.

9 JSL-5 brown, left-handed glove, what was significant
10 about that, that you documented it and collected it?

11 A Well, again, as I conferred with the detective along with
12 his supervisor, they saw a glove that was on the aisle and it
13 seemed out of place. So.

14 Q Was anyone suggesting it was the perpetrator's glove?

15 A No. It just said it just seemed out of place. So just
16 take that and send it, just in case.

17 Q Now, JSL-7 you note broken eyeglasses with possible
18 blood.

19 Was that the victim's eyeglasses?

20 A I can't recall.

21 Q And JSL-8 was a lens, left lens, broken eye glass
22 (JSL-7).

23 So that was the lens to those broken glasses.

24 A Correct.

25 Q But you're not sure as you sit here today what their

St. Louis - redirect - Siegel

135

1 significance was?

2 A No.

3 MR. FARRELL: Thanks, Detective. I have nothing
4 further.

5 THE COURT: Mr. Siegel, any redirect?

6 MR. SIEGEL: Yes, Your Honor. Thank you.

7 REDIRECT EXAMINATION

8 BY MR. SIEGEL:

9 Q Detective St. Louis, I want to make sure I understand.
10 Have you received training on footprint impressions?

11 A Yes.

12 Q And I'm showing you what Mr. Farrell showed you before,
13 your 3500 material.

14 MR. FARRELL: That's not in evidence. I didn't show
15 it to the jury.

16 MR. SIEGEL: Oh, I'm sorry.

17 MR. FARRELL: I showed it for a limited purpose.

18 MR. SIEGEL: I'm just showing it to the witness.

19 Q Do you see that in front of you?

20 A Yes.

21 Q Now, I don't think Mr. Farrell asked you, but seeing
22 that, does seeing that refresh your recollection of whether
23 you made a comparison of the victim's shoes, the shoe print
24 and the blood?

25 A No.

St. Louis - redirect - Siegel

136

1 Q Did you come to a conclusion about whose footprint was in
2 the blood?

3 MR. FARRELL: Objection. Asked and answered.

4 THE COURT: I am going to allow it, following up on
5 the cross.

6 A Yes, I did state victim's shoes.

7 Q And what was the basis for that conclusion?

8 A After watching that video, after watching that second
9 video and seeing him struggle and struggling with the
10 perpetrator and that's where basically the case investigator
11 and his supervisor, we all deemed that it might have been his
12 shoe impression.

13 Q And so to make sure I understand. You said on
14 cross-examination with Mr. Farrell that you watched a video?

15 A Correct.

16 Q And in that video did you see either the perpetrator or
17 the victim step in the blood?

18 A I saw him struggling and slipping, so I'm assuming that
19 they were slipping on blood.

20 Q And so what was the basis that you determined that that
21 was the victim's shoe print instead of the perpetrator's shoe
22 print?

23 A I don't know. I -- I guess just watching him slip and
24 slide, I guess, just seemed just two feet, my -- not my
25 supervisor, his supervisor, my case investigator and his

St. Louis - redirect - Siegel

137

1 supervisor, basically said I guess that's the victim's --

2 MR. FARRELL: Objection to what they basically said.

3 Move to strike.

4 THE COURT: Sustained.

5 A That's the victim's shoe impression --

6 MR. STEIN: Excuse me. He's still answering the
7 question.

8 THE COURT: Stricken.

9 Q So putting aside what anyone said, from your
10 investigation --

11 A Yes.

12 Q -- did you come to a conclusion about whose footprint
13 that was in the blood?

14 A It could have been both. It could have been the victim
15 or the perpetrator's.

16 Q You were also asked about transference of DNA?

17 A Correct.

18 Q Are you a DNA expert?

19 A No.

20 Q Do you understand how transference would work?

21 A Not fully. To a certain -- to a certain caliber, yes;
22 but not fully, no.

23 Q And do you have an understanding of how likely or
24 unlikely transference would be?

25 MR. FARRELL: Objection. He's not an expert.

St. Louis - redirect - Siegel

138

1 THE COURT: He has some limited abilities. The
2 question is, is that among them?

3 THE WITNESS: State that again, sir.

4 Q Do you have an understanding about how likely or unlikely
5 transference would be in any given case?

6 A Yes.

7 THE COURT: Based on your training.

8 THE WITNESS: Yes.

9 THE COURT: So he says he has that. Mr. Siegel may
10 inquire. Based on his training, he has an understanding of
11 likelihood or not likelihood.

12 MR. SIEGEL: Just one moment.

13

14 (Continued on following page.)

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Proceedings

139

1 (continuing)

2 MR. SELDEN: No further questions, Your Honor.

3 MR. FARRELL: I have nothing further. Thank you,
4 Judge.

5 THE COURT: Mr. St. Louis, you are excused. Thank
6 you.

7 THE WITNESS: Thank you.

8 MR. SELDEN: Should we call for our next witness or
9 would you like to take our afternoon break?

10 THE COURT: It sounds like the witness who may be
11 going on very short. We had a long witness this morning.
12 This is not one of them?

13 MR. SELDEN: I don't think so.

14 THE COURT: Then it makes more sense to take the
15 afternoon break early than to start and taking it in the
16 middle.

17 Ladies and gentlemen, we are going to take our
18 mid-afternoon break. Again, do not discuss the case amongst
19 yourselves or with anyone else you might run into. Continue
20 to keep an open mind.

21 We will come back in about 10 or 15 minutes and that
22 will put us in the home stretch for today's court session.

23 Again, thank you for your attentiveness and
24 continued cooperation. We will see you in about 10 or 15.

25 (Jury exits the courtroom.)

Proceedings

140

1 THE COURT: See you in 10 or 15.

2 MR. SELDEN: Thank you.

3 (Recess taken.)

4 THE COURTROOM DEPUTY: All rise. Court is back in
5 session. Counsel for both sides are present, including the
6 defendant.

7 THE COURT: All right. Mr. Selden, is this your
8 witness?

9 MR. SELDEN: Your Honor, it is. In advance of the
10 next potential Government witness, we want to flag for the
11 Court that we have a certified federal court interpreter, Ms.
12 Vivian Goa. With the Court's permission we would like to
13 assist the witness.

14 THE COURT: Is this one of ours or one of yours?

15 MR. SELDEN: It is one of ours, but she has been
16 certified federally previously. She is available here today.
17 This is the witness that we previously flagged for the Court
18 that we would request limited accommodation for.

19 THE COURT: Before we resume with the jury, she is
20 not one of the Court's, but I think it would be appropriate to
21 have her sworn.

22 MR. SELDEN: Absolutely, Your Honor. We were going
23 to suggest just that.

24 THE COURT: Why don't we do that before we proceed
25 further.

Proceedings

141

1 MR. SELDEN: Absolutely. Before bringing any
2 potential witness, with the Court's brief indulgence, we will
3 step outside and bring her in.

4 THE COURT: Yes.

5 THE COURTRoom DEPUTY: Please raise your right hand.

6 (Interpreter sworn.)

7 THE COURT: Please state your first name and last
8 name for the record.

9 THE INTERPRETER: Vivian Goa, G-O-A.

10 THE COURTRoom DEPUTY: Thank you.

11 MR. STEIN: Judge, there is a possibility, depending
12 on my perspective, I might want to move my chair over there,
13 okay.

14 THE COURT: We will let you move around, Mr. Stein.

15 MR. STEIN: Thank you. I have been liberated.

16 THE COURT: I will advise the jury the witness may
17 be in need, from time to time, of the assistance of an
18 interpreter and that's why the interpreter is present there.
19 Are we otherwise ready to go?

20 MR. SELDEN: We are, on behalf of the Government.

21 Thank you, Your Honor.

22 THE COURT: Please get our jurors.

23 (Jury enters the courtroom.)

24 THE COURT: Mr. Selden, will you have a way of
25 flagging for us those other issues you have?

Proceedings

142

1 MR. SELDEN: Your Honor, I do, and I have a notepad
2 with me here. I believe the witness has at times indicated
3 through use of a pen. So we would just ask to leave a pen up
4 with the witness in front of him. If I may actually leave a
5 pen once the jury is in.

6 (Jury enters the courtroom.)

7 THE COURT: Be seated, please. Counsel will
8 stipulate that the jury is present and properly seated.

9 MR. SELDEN: On behalf of the Government, thank you,
10 Your Honor.

11 MR. STEIN: Yes, Judge.

12 THE COURT: Welcome back, ladies and gentlemen. We
13 are ready to proceed. Mr. Selden has indicated he has another
14 witness.

15 MR. SELDEN: Thank you, Your Honor. The Government
16 calls Mr. Alejandro DeLeon.

17 The Court's brief indulgence while we step outside
18 and locate Mr. DeLeon.

19 THE COURT: Yes, please.

20 THE COURTRoom DEPUTY: Please raise your right hand.

21 (Witness sworn.)

22 THE COURTRoom DEPUTY: Please state your first and
23 last name for the record.

24 THE WITNESS: Alejandro DeLeon.

25 THE COURTRoom DEPUTY: Spell it for the record.

DeLeon - direct - Selden

143

1 THE WITNESS: Alejandro DeLeon.

2 THE COURTROOM DEPUTY: Please spell it for the
3 record.

4 THE COURT: He can't.

5 Be seated, please. Mr. DeLeon.

6 Ladies and gentlemen, at times we have witnesses who
7 have various degrees of English proficiency and at times
8 witnesses can operate under the English language and sometimes
9 they lapse into their native language. So we have a standby
10 interpreter who is present to assist Mr. DeLeon should the
11 need arise.

12 Mr. Selden.

13 MR. SELDEN: Thank you, Your Honor.

14 ALEJANDRO DeLEON,

15 called by the Government, having been duly
16 sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. SELDEN:

19 Q Good afternoon, Mr. DeLeon.

20 A Thank you.

21 Q Mr. DeLeon, where are you from?

22 A Alejandro DeLeon.

23 Q Are you from New York?

24 A New York.

25 Q Mr. DeLeon, when you were younger, were you raised in

DeLeon - direct - Selden

144

1 Puerto Rico?

2 A Yes.

3 Q Mr. DeLeon, how old are you?

4 Mr. DeLeon, would you like to write on a notepad?

5 A Yes, please.

6 MR. SELDEN: Your Honor, may I approach the witness?

7 THE COURT: You may.

8 MR. SELDEN: Thank you, Your Honor. For the record,
9 I have noted Government Exhibit 135 on the notepad.

10 For the record, Mr. DeLeon has indicated the number
11 50 on the notepad.

12 Q Mr. DeLeon, are you 50 years old?

13 A Yes.

14 Q I am going to leave this in front of you for a moment,
15 okay.

16 Mr. DeLeon, in front of you, to your right, is a
17 computer screen. I am going to put up Government Exhibit
18 106-A on that computer screen, okay. Please take a look at it
19 and see if you recognize where that is.

20 MR. SELDEN: Ms. Bates, if you could put up 106-A,
21 please.

22 And, Mr. Villanueva, this has previously been
23 admitted as Government Exhibit 106-A.

24 Q Mr. DeLeon, do you recognize where Government Exhibit
25 106-A is?

DeLeon - direct - Selden

145

1 A Yes.

2 Q Where is 106-A?

3 A By Duane Reade.

4 Q Did you work at that Duane Reade?

5 A Yes. Yes.

6 Q What was your job at that Duane Reade?

7 A Manager.

8 Q How long did you work at the Duane Reade? Of course, Mr.
9 DeLeon.

10 MR. SELDEN: For the record, the witness has written
11 on Government Exhibit 135 the number 12.

12 THE INTERPRETER: And he said more than 12.

13 Q More than 12 years?

14 A I think so.

15 Q Mr. DeLeon, is that Duane Reade located in Queens, New
16 York?

17 A Yes.

18 Q When you worked at the Duane Reade, did you have any
19 employees that worked for you?

20 A Yes.

21 Q How many employees?

22 A Two (in English).

23 Q Mr. DeLeon, I am now going to show a clip from a
24 previously admitted, by stipulation, photograph. I'm sorry, a
25 photo of a clip from a previously admitted exhibit, and that

DeLeon - direct - Selden

146

1 is Government Exhibit 130.

2 A It's me.

3 Q And, Mr. DeLeon, you just said "it's me"?

4 A Yeah. I working that day.

5 Q Were you working at the Duane Reade that day?

6 A Yes.

7 Q Can you touch on the screen and show where you are? Can
8 you touch the screen?

9 A Here.

10 Q Can you circle yourself?

11 A This.

12 MR. SELDEN: For the record, the witness has tapped
13 on the person who appears to be himself on Government Exhibit
14 130.

15 Q Mr. DeLeon, I want to turn your attention next to the
16 next photograph, 131.

17 A It's me again.

18 Q You said it's you again. Is that you working at the
19 Duane Reade also?

20 A Yes.

21 Q Is there a cash register immediately behind you?

22 A Mine. It's mine.

23 Q Did you work at that cash register?

24 A Yes. Yes.

25 Q Was there money in that cash register when you were

DeLeon - direct - Selden

147

1 working?

2 A Yes.

3 MR. SELDEN: And for the record, the witness has
4 indicated yes and is moving his hand back and forth?

5 Q Mr. DeLeon, was there money in the other cash registers
6 that we see in Government Exhibit 131?

7 Two?

8 A Two more. Here and here.

9 MR. SELDEN: For the record, Your Honor, on
10 Government Exhibit 131, Mr. DeLeon has pointed to two
11 additional cash registers.

12 Q Mr. DeLeon, can you point to where you are in this
13 photograph, please?

14 A I was -- I was here just a little -- they were -- oh, my
15 God. The guys -- my guys were picking up. My guys. My guys.

16 Q Were your guys with you that night or were they in
17 another part of the store?

18 A Inside, downstairs, uh-hum.

19 Q Were the other two employees downstairs when you were
20 standing here in Government Exhibit 131?

21 A Yes.

22 Q Mr. DeLeon, I want to now ask you if we could turn to the
23 next photograph. What do we see in Government Exhibit 132?

24 A The guy (in English).

25 Q Mr. DeLeon, when you saw the guy, were you able to tell

DeLeon - direct - Selden

148

1 how old he was?

2 A I think -- I think it's this, I believe.

3 MR. SELDEN: For the record, the witness has written
4 down the number 23.

5 Q Mr. DeLeon, were you able to see the guy's hair?

6 A Yes, I think. Yes. He has one.

7 MR. SELDEN: For the record, the witness has pointed
8 out outside of his head.

9 A Yes. He was like that.

10 Q Mr. DeLeon, can you hold up your left hand.

11 Can you put it down, please.

12 What happened, if at all, between you and the guy
13 that you remember?

14 A He wanted the money. He wanted the money, but I closed
15 the money. I closed it.

16 Q Mr. DeLeon, before this night, did you use an
17 interpreter?

18 A No. No. Why?

19 Q Thank you, Mr. DeLeon.

20 MR. SELDEN: I don't have any further questions for
21 you. Okay. Thank you.

22 THE COURT: Thank you, Mr. Selden.

23 Any cross?

24 MR. STEIN: No questions, Your Honor.

25 THE COURT: Thank you, from Stein.

DeLeon - direct - Selden

149

1 Mr. DeLeon, thank you. You are excused.

2 THE WITNESS: Thank you.

3 THE COURT: You're welcome.

4 MR. SELDEN: Before the next witness is called in,
5 the Government moves to admit Government Exhibit 135 into
6 evidence.

7 THE COURT: Any objection?

8 MR. STEIN: I'm sorry, Judge, I missed the first
9 part. Something about Government Exhibit 135.

10 MR. SELDEN: I will be happy to repeat it, Mr.
11 Stein. The Government moves to admit Government Exhibit 135
12 into evidence.

13 MR. STEIN: The notepad, no objection.

14 THE COURT: Received without objection.

15 (Government's Exhibit 135 received in evidence.)

16 MR. SIEGEL: Your Honor, the Government calls Anjan
17 Saha.

18 THE COURTRoom DEPUTY: Raise your right hand.

19 (Witness sworn.)

20 THE COURTRoom DEPUTY: Please state your first and
21 last name.

22 THE WITNESS: My name is Anjan Saha, A-N-J-A-N,
23 S-A-H-A.

24 THE COURT: Speak directly into the microphone. Mr.
25 Siegel.

Saha - direct - Siegel

150

1 ANJAN SAHA,

2 called by the Government, having been duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SIEGEL:

6 Q Good afternoon, Mr. Saha.

7 A Yeah.

8 Q Mr. Saha, where are you from originally?

9 A I'm from Louisiana.

10 Q Were you born in Louisiana?

11 A No.

12 Q Where were you born?

13 A I am from India.

14 Q When did you come to America?

15 A 2017.

16 Q When you came to America, did you ever live in New York?

17 A Yeah.

18 Q Approximately when did you live in New York?

19 A It's 2018.

20 Q Why did you come to New York?

21 A For my study.

22 Q Where is it that you were going to study?

23 A I was planning to get admission in the lag community
24 college. La Guardia.

25 Q Did you work while you were in New York?

Saha - direct - Siegel

151

1 A Yeah.

2 Q Where did you work?

3 A 7-Eleven.

4 Q What did you do at 7-Eleven?

5 A As a cashier.

6 MR. SIEGEL: So I would like to show an exhibit just
7 to the witness.

8 Q I am showing you what has been marked as Government
9 Exhibit 110. It is on the screen in front of you, do you
10 recognize Government Exhibit 110?

11 A Yes, sir.

12 Q What do you recognize Government Exhibit 110 as?

13 A This is the picture of 7-Eleven I used to work.

14 Q Is this a fair and accurate depiction of the 7-Eleven
15 where you used to work?

16 A Yes, sir.

17 MR. SIEGEL: Your Honor, I move to admit Government
18 Exhibit 110.

19 MR. STEIN: No objection.

20 THE COURT: Seed without objection.

21 (Government's Exhibit 110 received in evidence.)

22 MR. SIEGEL: May I publish it, please?

23 THE COURT: You may.

24 (Exhibit published.)

25 Q Mr. Saha, what hours did you work at the 7-Eleven?

Saha - direct - Siegel

152

1 A 9:00 to 6:00.

2 Q Is that 9:00 p.m. to 6:00 a.m.?

3 A Yeah.

4 Q Were you working at the 7-Eleven in late 2018?

5 A Yeah.

6 Q Do you still work at the 7-Eleven?

7 A No.

8 Q Why don't you still work at the 7-Eleven?

9 MR. STEIN: Objection, Judge.

10 THE COURT: Are you going to connect it up in some
11 way?

12 MR. SIEGEL: I am.

13 THE COURT: I will take it subject to connection.

14 Q Why don't you still work at 7-Eleven?

15 MR. STEIN: Objection, Judge.

16 THE COURT: Overruled.

17 Q You can answer.

18 A Me? Once incident happened, someone robbed me when I was
19 working in the 7-Eleven, after that, I left from New York.

20 Q What happened that night?

21 A One guy came to my store, I was in -- I was working in
22 7-Eleven and one guy came to store and put gun in my head and
23 he robbed me.

24 Q Let's take that piece by piece. Before this person put a
25 gun at your head, did you see him around the store?

Saha - direct - Siegel

153

1 A Before the robbery, he came one time, then he went
2 outside, then he came again to the store.

3 Q Was that all the same night of the robbery?

4 A Yes.

5 Q After he came back in the second time, what did this
6 person do?

7 A He was trying to buy a box of egg. He gave me a one
8 dollar bill but the egg was expensive, \$10 more dollars. So I
9 say this is not enough for the egg, and then he said it's
10 okay, I don't need the egg. He was showing the hand like
11 this.

12 MR. SIEGEL: Just for the record, when he say show
13 his hand like this, he indicated that he was shaking his hand
14 from side to side.

15 A Yeah. He don't want the egg.

16 Q Then what happened?

17 A And he got one candy. It's like 25 cents, and then I
18 opened the cash register to give him change that time and when
19 I saw at him, I saw the gun on my head.

20 Q Did he say anything to you when he had a gun at your
21 head?

22 A He was trying to say something, but I don't know what.

23 Q What did you understand he wanted?

24 A Because he was covered by jacket and everything, so it's
25 not clear.

Saha - direct - Siegel

154

1 Q Did you understand if he wanted something?

2 A Maybe asking for --

3 MR. STEIN: Objection.

4 Excuse me, objection, leading.

5 THE COURT: You can't speculate to any of that.

6 Q What did you do?

7 A I kept whole drawer of cash register to him.

8 Q Why did you give the cash register to him?

9 A Because I'm scared and he put gun at my head.

10 Q What happened after you gave him the cash register tray?

11 A Then he left.

12 Q Did you follow him out?

13 A No.

14 Q Why not?

15 A Because I really scared.

16 Q Did you see where he went?

17 A No.

18 Q What did you do after he left?

19 A I called my coworker. The old guy who used to work with
20 me and then I explained what happened to me and then I called
21 the cop, 911.

22 Q The person who you saw who held that gun to your head,
23 how old did that person appear to be?

24 A Maybe 18, 19, like that.

25 Q Why did you think so?

Saha - direct - Siegel

155

1 A Because he was young and in front of me.

2 Q So I'd like to show you Government Exhibit 408-E, which
3 is already in evidence.

4 MR. SIEGEL: Mr. Villanueva, if we can take it off
5 the publisher for a second.

6 THE COURTROOM DEPUTY: Sure.

7 Q I'm showing you 408-E and I am putting it to timestamp
8 shown as approximately 3:55:38 a.m.

9 MR. SIEGEL: Mr. Villanueva, we can publish it now.
10 (Exhibit published.)

11 Q I'm going to play the video and then I am going to ask
12 you some questions about it.

13 (Video playing.) (Video paused.)

14 MR. SIEGEL: I am going to stop it at timestamp
15 3:56:45. I am going back to timestamp 3:55:40.

16 Q Who is the person that is shown in this video at this
17 point?

18 A This guy.

19 Q Who is that person?

20 A This guy who robbed me.

21 Q Is that the person who robbed you?

22 A Yes, sir.

23 MR. SIEGEL: I am hitting play.

24 (Video played.) (Video paused.)

25 Q I am going to stop at 3:55:47 and there is a person

Saha - direct - Siegel

156

1 wearing red. Who is that person?

2 A It's me.

3 Q And I am stopping at timestamp 3:55:53. There is a
4 person in blue. Who is that person?

5 A He is the old guy who used to work with me.

6 MR. SIEGEL: I am hitting play again.

7 (Video playing.) (Video paused.)

8 MR. SIEGEL: I am hitting pause at time 3:56 and 39
9 seconds.

10 Q What is that in the robber's hands?

11 A It was a gun.

12 Q What were you thinking when you saw that gun?

13 A I really scared, so I don't know what I was thinking.

14 MR. SIEGEL: I am hitting play again.

15 (Video playing.) (Video paused.)

16 MR. SIEGEL: I am hitting stop at timestamp 3:56:43.

17 Q What is that in your hands?

18 A The drawer of the cash register.

19 (Continued on following page.)

20

21

22

23

24

25

Saha - direct - Siegel

157

1 BY MR. SIEGEL: (Continuing)

2 Q Was there money in the drawer?

3 A Yes.

4 Q I'd like to show you another video. I'm showing you
5 Government Exhibit 408-A which is in evidence.

6 (Video played.) (Video stopped.)

7 Q So we're at the end of the video at 14 seconds.

8 Who is that person in red?

9 A It's me.

10 Q And I'm going to hit play on the video one more time.

11 (Video played.) (Video stopped.)

12 MR. SIEGEL: My apologies.

13 (Video played.) (Video stopped.)

14 Q I'm going to pause about 7 seconds into the video.

15 Who is the person standing in the door?

16 A That guy who robbed me.

17 Q Now I'd like to show you Government Exhibit 408-D which
18 is another video in evidence.

19 (Video played.) (Video stopped.)

20 Q I'm hitting pause about 3 seconds into the video.

21 Who is the person standing by the door?

22 A This is who robbed me.

23 Q Is that the person who robbed you?

24 A Yes.

25 Q What is that in his hands?

Saha - direct - Siegel

158

1 A The drawer of the cash register.

2 (Video played.) (Video stopped.)

3 MR. SELDEN: Your Honor, permission to approach the
4 witness to hand him an exhibit?

5 THE COURT: You may.

6 Q Mr. Saha, I'm handing you a CD containing Government
7 Exhibits 116-A through 116-H and it's been marked as
8 containing 116-A to 116-H.

9 Do you recognize that CD?

10 A Yes, sir.

11 Q How do you recognize that CD?

12 A Because I put my name and date on it.

13 Q What is on that CD?

14 A The picture of me and that guy who robbed me.

15 Q Are the pictures on the CD fair and accurate depictions
16 of you and the person who robbed you from that night?

17 A Yes, sir.

18 MR. SELDEN: Your Honor, I move to admit Government
19 Exhibits 116-A to 116-H.

20 THE COURT: Any objection?

21 MR. STEIN: No.

22 THE COURT: Received without objection.

23 (So marked.)

24 Q I'm starting with Government Exhibit 116-A. Who is the
25 person standing in the door?

Saha - direct - Siegel

159

1 A This guy?

2 Q Who is that person?

3 A Yes, who robbed me.

4 Q And who is the person in red?

5 A It's me.

6 Q And now I'm showing you Government Exhibit 116-B. Can
7 you see the person who robbed you in this picture?

8 A Yes, sir.

9 Q Where are they standing?

10 A (Indicating.)

11 MR. SIEGEL: Let the record reflect that he has
12 circled a person wearing a green and blue hoodie and black
13 pants with copper lines and white shoes.

14 Q I'm now showing you Government Exhibit 116-C. Do you see
15 the person who robbed you in this picture?

16 A Yes, sir.

17 Q Where is that person standing?

18 A (Indicating.)

19 MR. SIEGEL: Let the record reflect that Mr. Saha
20 again has circled a person wearing a green and blue hoodie,
21 black pants with copper lines on it and white shoes.

22 Q I'm not going to show you all these pictures. I just
23 want to show you one more.

24 Government Exhibit 116-G. Do you see the person who
25 robbed you in this picture?

Saha - cross - Farrell

160

1 A Yes, sir.

2 Q Could you circle that person?

3 A (Witness complies.)

4 MR. SIEGEL: Let the record reflect that he has
5 circled a person in a green and blue hoodie and black pants.

6 Your Honor, may I have just one moment.

7 (Pause.)

8 MR. SIEGEL: Your Honor, the government has no
9 further questions for this witness.

10 THE COURT: Thank you, Mr. Siegel.

11 Mr. Stein or Mr. Farrell?

12 MR. FARRELL: Yes, I'm going to ask him two
13 questions.

14 THE COURT: Mr. Farrell.

15 CROSS-EXAMINATION

16 BY MR. FARRELL:

17 Q Good afternoon, Mr. Saha.

18 A Good afternoon.

19 Q My name is Gary Farrell. You and I have never met or
20 discussed the case, right?

21 A Yes.

22 Q Did you quit the next day after this happened?

23 A I'm sorry?

24 Q Did you quit 7-Eleven right after this happened, the next
25 day?

Saha - cross - Farrell

161

1 A Yes, sir. Yes, sir.

2 Q Are you working today?

3 A No.

4 Q I mean not as you're sitting here in court, obviously,
5 but do you have a job?

6 A Yes, sir.

7 Q What do you do?

8 A A gas station.

9 Q Another gas station?

10 A Yes, sir.

11 Q In Queens?

12 A Right now, I'm not living in New York, I mean, New York.

13 Q Oh, okay. You're about 28 or 29 years old, right?

14 A Yes, sir.

15 Q So you're not going to LaGuardia anymore?

16 A No, sir.

17 Q You still going to school somewhere?

18 A Yes, sir.

19 Q The guy that robbed you, he took out the gun with his
20 right hand, right? We watched that video about three times.

21 A Yes, sir.

22 Q And you gave him the drawer right away, correct, the cash
23 register drawer? You gave him the whole drawer?

24 A Yes.

25 Q How much money was in the drawer, you think?

Saha - cross - Farrell

162

1 A I'm not sure but maybe more than \$200.

2 Q Okay. And including that -- by the way, you told the
3 cops it was less than 300, correct?

4 A Yeah.

5 Q And in that 300, was some of it change, quarters, dimes,
6 nickles?

7 A I think so.

8 Q Okay. Did you keep your rolls of change in there also,
9 like rolls of quarters, rolls of dimes, rolls of nickles?

10 A At that time?

11 Q Yes.

12 A I can't remember.

13 Q Okay. Did that store take food stamps? Was it possible
14 there were food stamps in there too in that drawer?

15 A No.

16 Q That store didn't take food stamps?

17 A I cannot remember.

18 Q Were you ever trained by 7-Eleven how to act if somebody
19 pulled a gun at you?

20 A Yes.

21 Q And did they tell you always give up everything? Right?

22 A Everything.

23 Q Don't fight with the guy, right?

24 A Yeah.

25 Q Was it pretty slow that time in the morning because it

Saha - cross - Farrell

163

1 was, like, what time was it, about 3 in the morning?

2 A I cannot remember the exact time but it was, it was night
3 out.

4 Q The midnight shift, that's when you worked, right?

5 A Yes, sir.

6 Q And this was a Sunday after Thanksgiving weekend going
7 into the Monday, right? Do you remember that?

8 A I cannot remember.

9 Q You told us on direct the guy who robbed you seemed
10 really young, right, like 18, 19, maybe like at the end of
11 high school?

12 A Maybe. I'm not sure.

13 Q You couldn't see anything about his hair, could you?

14 A No, sir.

15 Q You mentioned an old guy and we saw him in the video,
16 right?

17 A Yeah.

18 Q You called him the "old guy." What was his name, do you
19 remember?

20 A I forgot. I always called him "uncle."

21 Q Okay.

22 A Yeah.

23 Q You weren't related though, I have a feeling, right?

24 A All -- he's an old guy. Everyone called him "uncle."

25 Q The cops came pretty quickly because you called 911,

Saha - cross - Farrell

164

1 right?

2 A Yes, sir.

3 Q And the police arrived, right?

4 A Yeah.

5 Q And they interviewed you, right? They asked you what
6 happened?

7 A No, they took me to find that guy.

8 Q But you weren't able to find the guy, right?

9 A No.

10 Q When you say they took you, they took you in a car and
11 you rode around in a marked police car?

12 A Yes, sir.

13 Q Did they interview the old guy? Sorry to refer to him by
14 that but that's what we're calling him, the guy you called
15 "uncle."

16 Did the cops ask him anything about the robber?

17 A Yes.

18 Q They did? When you called 911, you said, "I'm really
19 nervous right now," right?

20 A I cannot remember.

21 Q The government didn't play your 911 call for you before
22 you testified?

23 A Sorry?

24 Q The government, you know, these guys represent the
25 government. Right?

Saha - cross - Farrell

165

1 A Yeah.

2 Q Did they play your 911 call so you can hear it? Did they
3 play it for you so you can remember it? I know it was a long
4 time ago.

5 A No.

6 Q Well, you were really nervous, right? Forget what you
7 said to 911. I'm asking you when you saw that big gun pointed
8 at you, you were really nervous, right?

9 A Yes, sir.

10 Q Did you recall on the 911 call, the operator was trying
11 to get a description from you and you said it was a brown gun
12 and the guy was maybe wearing jeans?

13 A Yes.

14 Q Do you remember that?

15 A Yes.

16 Q Thanks, sir.

17 MR. FARRELL: I have nothing further.

18 THE COURT: Thank you, Mr. Farrell.

19 Any redirect, Mr. Siegel?

20 MR. SIEGEL: Nothing from the government,
21 Your Honor.

22 THE COURT: Mr. Saha, you are excused. Thank you
23 very much.

24 THE WITNESS: Oh, can I go?

25 THE COURT: You may.

Sidebar

166

1 THE WITNESS: Thank you.

2 THE COURT: Have a good evening.

3 (Witness excused.)

4 THE COURT: I'll touch base with counsel at sidebar.

5 (The following occurred at sidebar.)

6 THE COURT: If we have another short one, I'm
7 inclined to take him. I don't know. I don't know what --

8 MR. SELDEN: I think, Your Honor, we probably have a
9 longer witness rather than a short witness.

10 THE COURT: Okay.

11 MR. SELDEN: This might be a good time for a break
12 for the day.

13 THE COURT: For the day? Okay. Just if we had
14 another one of these little baby short guys, I would take him.

15 MR. STEIN: While we're up here, can you tell us who
16 the other witnesses are besides the ones that were in the
17 e-mail?

18 MR. SELDEN: In light of today's defense
19 presentation, I think since we haven't concluded the trial
20 day, we're not yet ready to make that assessment on the record
21 here, but we'll be happy to e-mail you this evening.

22 Just for the record, as we did yesterday, in advance
23 of trial, we'll be happy to e-mail defense.

24 THE COURT: That's great. That's the way it should
25 be.

1 (In open court; sidebar ends.)

2 THE COURT: All right. Ladies and gentlemen, we've
3 consulted with counsel to see whether we have more productive
4 time. You may consider this good news. The answer was no so
5 we are going to break for the night and return tomorrow
6 morning.

7 I will go over with you the instructions once again.
8 As I say, we don't do them as a matter of routine. We do them
9 because they are really important so that we can ensure that
10 the case is ultimately decided the way cases are to be
11 decided. The only thing that counts is what happens inside
12 the four walls of this courtroom so we want to make sure we go
13 over the rules so you understand them clearly.

14 So, again, obviously, the case has just gotten
15 underway but it doesn't matter whether it's the second day,
16 the tenth day, the hundredth day of a trial, juries have to
17 keep an open mind until the case is given to them for
18 deliberations. So that means you are not making any
19 determinations about anything. You're listening, you're
20 observing, letting it all filter into your mind.

21 You are not to discuss the case amongst yourselves.
22 You are also not to discuss the case among anybody else or
23 with anybody else. And discussing the case doesn't mean just
24 discussing what happened during trial on a given day.
25 Discussing the case means talking about the case, wondering

1 about how the Court, asking about how the Court's operating,
2 saying that I'm on a case that's like this, it's in federal
3 court. None of that is an appropriate conversation. There is
4 to be no mention, no discussion about anything that directly
5 or indirectly relates to this case. Whether it's with people
6 in the courtroom, in the courthouse, on the way to the
7 courthouse, on the way from the courthouse, after you get
8 home, on the train, no discussion at any time about anything
9 that even remotely touches upon the case.

10 During the overnight period, again, the "don't
11 investigate" rule still applies and, of course, if you listen
12 carefully and I'll remind you from time to time some of the
13 things Mr. LaMonaco told you about.

14 Obviously, you're now hearing locations. So one of
15 the things that is also prohibited even if you live in the
16 neighborhood, we're asking you not to go anywhere near the
17 locations that have been referenced at any time during the
18 course of the trial, but you're also not to do any
19 investigations, electronic or the old fashioned kind of
20 actually looking things up in a book. Again, what counts is
21 not how you can investigate. What counts is how well you
22 listen and take in what you hear and see in the courtroom.

23 Now, we also have a concern, again, ensuring the
24 integrity of the process that in case there's a media account
25 of what goes on in this trial, that you tune it out, whether

1 it's on radio TV or in the newspapers, but, again, a great
2 certain is that it may pop up on social media. One can never
3 account for what appears on Facebook or on Instagram or any of
4 the other new means of media. So should there be an account
5 of these proceedings, again, just block it out.

6 Now, I also urge jurors to the extent that the media
7 has accounts about any proceeding in a court, that you block
8 that out as well for fear that you might hear something there
9 that ultimately confuses you about what you're supposed to be
10 doing here which is why I strongly suggest that you block it
11 out.

12 And lastly, we are on radio silence so that
13 communications rule is a two-way street. Not only are you not
14 listening to things that come to you through the media, you're
15 not putting out anything in the other direction, whether it's
16 by telephone or Instagram or Twitter or anything else. There
17 is to be no reference whatsoever to this case, any of the
18 personalities, any of the issues or that you're even a juror,
19 that you come to Brooklyn, you come to the courthouse. All of
20 that is strictly forbidden during the course of this trial.
21 That's the only way we can ensure there's a standard both for
22 the government and the defendant in the course of trial.

23 So with all those admonitions, it's time to take our
24 evening break. There was a few sprinkles out there before. I
25 don't know if it's still sprinkling so you may have to dodge a

170

1 couple of raindrops on the way home, but we will reassemble
2 tomorrow morning. I will ask you to come to the Central Jury
3 Room. Never come to any place other than the Central Jury
4 Room, period, not at any time, not to this floor, not to any
5 other floor. You will go to the Central Jury Room and you
6 will be directed from there to the courtroom when it's time to
7 appear.

8 So come to the Central Jury Room at around 9:45.
9 We'll start as close as we can to 10:00 and we wish you a very
10 pleasant evening and, again, all of us appreciate your
11 patience, your cooperation and your sacrifice.

12 Have a pleasant evening. We will see you tomorrow.

13 (Jury exits.)

14 THE COURT: Okay. Let's get ready for tomorrow and
15 we'll go from there.

16 MR. SELDEN: Thank you, Your Honor.

17 (Matter adjourned to March 3, 2020 at 10:00 a.m.)

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1 I N D E X

2 WITNESSES:

3 RUJI WANG	
4 DIRECT EXAMINATION BY MR. SELDEN	39
5 CROSS EXAMINATION BY MR. FARRELL	53
5 REDIRECT EXAMINATION BY MR. SELDEN	57
6 RECROSS EXAMINATION BY MR. FARRELL	58
7 JERRY ST. LOUIS	
8 DIRECT EXAMINATION BY MR. SIEGEL	67
8 CROSS EXAMINATION BY MR. FARRELL	117
9 REDIRECT EXAMINATION BY MR. SIEGEL	135
10 ALEJANDRO DeLEON	
11 DIRECT EXAMINATION BY MR. SELDEN	143
12 ANJAN SAHA	
13 DIRECT EXAMINATION BY MR. SIEGEL	150
13 CROSS-EXAMINATION BY MR. FARRELL	160

14 EXHIBITS:

15 Government Exhibit 106-A	49
16 Government Exhibit 106-B	52
17 Government's Exhibits S-11, 133-A and 133-B	63
18 Government's Exhibits S-9, 402-A, 402-B, 402-C, 402-D, 402-F, 402-G, 402-H, 402-I, 408-A, 408-B, 408-C, 408-D, 408-E, 410-A, 410-B, 410-C, 410-D, 411-A, 411-B, 411-C, 414-A, 414-B, 415-A, 415-B	66
21 Government Exhibits 106-A, 126, 127, 300-A, 300-B, 301-A, 301-B, 301-C, 302-A, 302-C, 302-D, and 302-E	75
22 Government's Exhibit 125	91
23 Government Exhibit 300	98
23 Government's Exhibit 135	149
24 Government's Exhibit 110	151
24 Government Exhibits 116-A to 116-H	158

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